11-822

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~307.~~ 81

THE UNITED STATES, APPELLANTS,

vs.

HENRY CLAMORGAN ET AL.

No. ~~308.~~ 82

HENRY CLAMORGAN ET AL., APPELLANTS,

vs.

THE UNITED STATES.

FILED NOVEMBER 17, 1876.

No. ~~320.~~ 93

CYPRIAN CLAMORGAN, APPELLANT,

vs.

THE UNITED STATES.

FILED DECEMBER 16, 1876.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

SUPREME COURT OF THE UNITED STATES.

No. 307.

THE UNITED STATES, APPELLANTS,

vs.

HENRY CLAMORGAN ET AL.

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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

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1 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

HENRY CLAMORGAN, CYPRIAN CLAMORGAN, Leon A. Clamorgan, and Julius Clamorgan, heirs of Jacques Clamorgan, petitioners, *ag'st* THE UNITED STATES, DEFENDANT. } No. 2225.

Be it remembered that at a regular stated term of the district court of the United States in and for the eastern district of Missouri, begun and holden at the city of St. Louis, in said district, on the first Monday, the 5th day of May, A. D. 1873, the following proceedings took place in this cause on Monday, the 28th day of July, A. D. 1873, to wit:

Filing petition.

HENRY CLAMORGAN, CYPRIAN CLAMORGAN, Leon A. Clamorgan, and Julius Clamorgan, heirs of Jacques Clamorgan, petitioners, *ag'st* THE UNITED STATES, DEFENDANT. } No. 2225.

Petition under acts of Congress approved 22d June, 1860, and 10th of June, 1872.

This day come the petitioners, by R. H. and J. L. Bradford, and Alexander D. Anderson, esquires, their attorneys, and file their petition in this cause under the acts of Congress approved on the 22d of June, 1860, and 10th day of June, 1872, for title to certain lands in the counties
2 of Lincoln and Saint Charles, in the State of Missouri, and also file Exhibits A, B, C, D, accompanying said petition.

And the said petition so filed is in the words and figures following, to wit:

Petition.

To the honorable judge of the United States district court for the eastern district of Missouri:

The petition of Henry Clamorgan, of the city of Saint Louis, & State of Missouri; of Cyprian Clamorgan, of the city of New Orleans, & State of Louisiana; of Leon A. Clamorgan, of the city of Saint Louis, & State of Missouri; & Julius Clamorgan, of Saint Paul, in the State of Minnesota, respectfully shows:

That heretofore their ancestor Jacques, or Don Santyago, or James Clamorgan, deceased, to wit, on the 1st day of March, seventeen hundred and ninety-seven, he being then an inhabitant of the Spanish colony of Louisiana, and residing in Saint Louis, in Upper Louisiana, presented his petition to the lieutenant-governor of Upper Louisiana, Don Zenor Trudeau, praying for a grant or concession, in full property, of three several tracts or parcels of land in said Upper Louisiana, contiguous to each other, & situated upon the right or west bank of the Mississippi River, a few leagues above its junction with the Missouri River, & which several tracts are thus particularly described in
3 said petition:

"The petitioner presumes to claim of your goodness that you

will be pleased to grant to him, on the western side of the river Mississippi, some leagues above the mouth of the Missouri, the tract of land bounded on one side by the little river called La Charette, alias Dardenne, & on the other by the little river called Au Cuivre; one on the south, the other on the north, will serve as boundaries to those two sides.

"The petitioner wishes, moreover, that you would be pleased to grant to him sixty arpens of land in front, on the banks of the Mississippi, immediately adjoining the mouth of the first above named river La Charette, in descending the current of the Mississippi; and again sixty arpens in front, also on the banks of the Mississippi, adjoining immediately to the upper side of the mouth of the second above-named river Au Cuiver, and ascending the current of the Mississippi.

"The depth of the three different above described tracts of land to be extended by two lines, starting from the banks of the Mississippi, one from the most southern, & the other from the most northern point (of the front) of the above demanded tracts, which two lines shall
4 be run parallel, on each side, in a westerly direction, until they reach the top of the high hills in the rear, and from there the said two lines to be continued and prolonged in the same westerly direction, until they reach a point at the distance of about two hundred arpens from the foot of said hills; and then those two extreme points shall be connected together by a straight line which shall be so run as to form the fourth side of the said three tracts here above demanded. The said lines encompassing in their extent all the waters of the above mentioned rivers La Charette, alias Dardenne, and Au Cuiver, in order that, hereafter, the petitioner may erect saw and grist mills thereon, also place there a number of cattle, have slaughter-houses, and send salt meat to the capital."

That the said several tracts of land, as described and prayed for in said memorial, were accordingly granted and conceded to the said Jacques Clamorgan on the third day of March, 1797, by the said lieutenant-governor Don Zenon Trudeau, by a decree of concession of said date, in the words and figures following, to wit:

"Don Zenon Trudeau, captain in the regiment of Louisiana, lieutenant-colonel by brevet, and lieutenant-govenor of the western part of Illinois.

5 "Cognizance being taken of the statement made by Don Santiago Clamorgan, and the governor-general, the Baron de Carondelet, having particularly recommended to me to facilitate and protect the discovery and commerce of Upper Missouri, in which the above named Clamorgan has engaged at my entreaties; considering the losses which said enterprise has occasioned to him, and the new expenses to which he shall have to contribute on account of the same undertaking, and how important it is to favor and extend the discoveries herebefore mentioned, without prejudice to the royal treasury, and to the interest and welfare of those settlements, but, on the contrary, in contributing to their prosperity, by drawing new inhabitants:

"For these considerations, and on account of the said Clamorgan having rendered himself worthy and deserving of the favors of the government, the surveyor of this jurisdiction (as soon as the occupations of his place will permit) shall survey, in favor of the party interested, the extent of land he solicits, in the way and manner described in the fore-

going document, which, together with the plat & certificate of
6 survey, and of the boundaries which shall be set (to said land),
will form the title of concession, which, in due time, he shall have to lay before the general government of the province in order to get its approbation and record.

"ZENON TRUDEAU.

"ST. LOUIS, *March* 3, 1797."

That afterwards, to wit, on the fifth of April, 1797, the said Zenon Trudeau, lieutenant-governor as aforesaid, having submitted to the governor-general, the Baron de Carondelet, the concession in favor of Clamorgan and the motives inducing him to make the same, the said governor-general wrote to the said lieutenant governor in reply, and confirmed and ratified the same concession in all its parts, in the words and figures following, to wit:

"I have read your official note dated 11th of last March, in which you state the motives which have induced you to grant to Mr. Clamorgan the tract of land situated between the two rivers Charette & Cuiver, both emptying into the Mississippi; also sixty arpens to the north and sixty arpens to the south of said rivers, which serve to determine the situation of said land, having the Mississippi in front. Two parallel lines are to be drawn, running in the interior of the country until they reach
7 at the distance of two hundred arpens beyond the foot of the first hills, conformably to the solicitation of the party interested. All which I do approve, Clamorgan having deserved this favor from the government."

All which will more fully appear by reference to certified copies and translations of the said petition, concession, and decree of confirmation, filed as part of this petition, and designated as Exhibits A, B, & C, and translations A, B, & C.

And your petitioners further show that under the laws, ordinances, and customs in force in the province of Louisiana at the dates of the foregoing concession and decree of confirmation, the lieutenant-governor and the governor-general had full power and authority to make valid concessions & grants of the royal domain without any known limit as to quantity, particularly when such grants were made in remuneration for services of meritorious persons, and that their said ancestor, the said Don Santiago or Jacques Clamorgan, became therefore invested with a complete, perfect, and indefeasible estate and title in and to the three tracts of land described in his petition and referred to and described in the said concession and confirmation.

8 That being so invested with good title to said lands he exercised over them the rights of ownership, and when the province of Louisiana was subsequently transferred by Spain to France by the treaty of San Ildefonso, of the first of October, 1800, and again by France to the United States by the treaty of Paris of the 30th of April, 1803, he regarded his rights as sacred and secured by the faith of those high contracting powers.

That although the first of said treaties was secret, being a compact between royal families for mutual establishments, & therefore unknown to the inhabitants of the province, yet the commissioners of the King of Spain, Manuel De Salsedo & de Casa Calvo, sent to New Orleans to deliver the province to France, in their proclamation made in the King's name on the 18th of May, 1803, declared, with respect to the inhabitants whom they were about to transfer to the new sovereign, "That they shall

be maintained and protected in the peaceable possession of their property; that all the concessions or grants of any description, made by the governors of those provinces, shall be confirmed to the inhabitants,
9 although they have not been confirmed by his Majesty."

That the said treaty between France and the United States of 30th of April, 1803, likewise provided in its third article in respect to the inhabitants as follows: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages & immunities of citizens of the United States, & in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess."

That the said Clamorgan, thus secured and protected in his rights, took all proper conservatory measures required by the new sovereign, the United States, to declare the nature and extent of his title to said lands and bring the same before the government for its recognition and ratification.

That in obedience to the act of Congress of March 2d, 1805, being the first law requiring owners and claimants of lands in the now State of Missouri, holding under titles derived from a foreign colonial source, to present their titles for recognition and confirmation, the said
10 Clamorgan presented his title and evidence thereof to the recorder & commissioners provided for by the act, who recorded the same and reported the claim in their report of January 20th, 1812, as one in their opinion not entitled to confirmation by the United States. (See report in Vol. 2, American State Papers, Duff Green's Ed., p. 516.)

That under the act aforesaid the said commissioners had no authority to confirm the said title or claims, but only to report the same to Congress for its final action, & hence the report aforesaid is not a decision on the merits.

That said act had, prior to said report, been amended by the act of March 3d, 1807, the 4th sec. of which gave said commissioners power to decide on the merits, and conclusively as against the United States, claims not exceeding a league square in quantity, which amendment in no way affected their power to finally decide the said claim of Clamorgan, because in fact, and as shown in the said commissioners' report, either of the three tracts claimed for exceeded that limit.

That the said adverse opinion of said commissioners against
11 the recognition of the title of Clamorgan has never been acted upon in any manner by Congress, and the rights of Clamorgan, thus presented and brought to the notice of the new sovereign, remained in suspense and uncertainty awaiting their recognition by the United States.

That in this condition of affairs, & on the 26th of May, 1824, Congress passed an act entitled "An act enabling claimants to lands within the limits of the State of Mo. & Ty. of Ark. to institute proceedings to try the validity of their claims," which was the first act allowing owners or claimants of lands in the State of Missouri to sue the United States in their own courts for confirmation of title.

That under said act the claim of Clamorgan might have been confirmed, as many less meritorious & regular titles were, had it not been that by the 3rd proviso of the 12th section the courts were absolutely denied jurisdiction of the case by name; the only reason for the prohibition which your petitioners can conjecture being the want of infor-

mation by Congress and even the Supreme Court upon the subject of
Spanish colonial land titles, & the laws, ordinances & usages of
12 Spanish officers in Louisiana in granting lands, as is evidenced
by the admission of the said Supreme Court in the case of John Smith vs. The United States (reported in 9th Peters, p. 329); the case of Saulard's heirs vs. The United States (doc. 100) had been decided adversely by the district court of Mo. in 1825, and it, with the Smith case, was held over by the Supreme Court until 1836 before finally disposed of, for the reasons above stated.

That this want of information is likewise further shown by the message of the President, John Quincy Adams, of February 11th, 1829, & the letter to the Sec. of State from the Hon. Joseph M. White, of February 4th, 1829, transmitted to Congress with said message, which appear in White's New Recopilacion, vol. 2, pp. 9 to 19.

That in the then Territory of Arkansas the jurisdiction of the courts under the said act of 1824 was restricted to claims not exceeding a league square, & as the Winter grants were known to be situated in that Territory and to cover large areas of country, & as the grants to Clamorgan, exaggerated as they were as to quantity, had been brought directly
to the attention of Congress by the report of 1812 aforesaid, the
13 general restriction in the one case as to all claims exceeding a
league square, and the special proviso in the other against the Clamorgan claims by name, must have proceeded from the then acknowledged want of information by the courts & by Congress concerning such titles, in view of which hasty legislation was deemed dangerous.

That said act of 26th May, 1824, was after revived and re-enacted, but the original proviso refusing to the courts jurisdiction of the Clamorgan titles was never repealed, modified, or affected.

That thus your petitioners, or those under whom they derived title, were debarred from taking further steps to confirm their claims until finally Congress passed the act of 9th July, 1832, amended by the act of 2nd March, 1833, providing a new board of commissioners to make a final report on all claims to land in the State of Missouri which had been filed in the office of the recorder of land-titles in pursuance of law, and which remained unconfirmed for any reasons whatsoever.

That in their final report of September 30th, 1835, the said board
number the claim of Clamorgan as 152, & decline to recommend
14 it to Congress for confirmation, upon the belief as declared by
them that Clamorgan "had abandoned his rights, or had by neglect of his privileges forfeited them" (see report of the commissioners, document 59, 24th Congress, 1st session, pp. 4, 5, 6, & 401 to 421). That said action of said board was not a decision of said claims on the merits, because by the law under which they exercised jurisdiction they were only authorized to report the claims to Congress for its final action, and not themselves to confirm them.

And your petitioners further show that on the 20th of October, 1813, the said Jacques Clamorgan sold and transferred all his rights to said land and to the said decrees of concession and confirmation, as heretofore said, to Jean Eli Tholosau, in which sale the said lands are stated to have an estimated extent of 448,000 arpens in superficies, and that on the 24th day of October, in the same year, the said Jean Eli Tholosau sold and transferred the same lands and all his rights under the said sale from Jacques Clamorgan to Cyprian M. and Maximin Clamorgan, natural sons of Jacques Clamorgan, in which sale the said Jean Eli

Tholosan reserved to himself the right to sell one-half of the said
15 lands upon condition that he should succeed in the period of 12
years in obtaining a confirmation of the title thereto, which said confirmation not having been so obtained, the said sale to the said Clamorgans became absolute.

That the said Cyprian M. Clamorgan died on the of 1827, & the said Maximin Clamorgan died on the day of 18 , both intestate and both without issue or other lawful heirs, in consequence of which their right and title to the said lands escheated to the State of Missouri, which State did, by act of its legislature of the 23d of March, 1863, waive its said right & relinquish the same to & in favor of your petitioners by name, thus investing them as legal heirs of Cyprian M. & Maximin Clamorgan, deceased, with all the rights, interests, and estate held by the said decedents in the lands aforesaid, which said rights and estate rested in them under said act of relinquishment in the following proportions: To each of your petitioners, Henry Clamorgan & Cyprian Clamorgan, being the natural children of Apauline or Pauline
Clamorgan (who was the natural sister of said Cyprian M. and
16 Maximin), one undivided third part, and to each of your petitioners, Leon A. Clamorgan & Julius Clamorgan, being the children and legal heirs of Louis Clamorgan, deceased (who was a natural son of said Apauline or Pauline Clamorgan), one undivided sixth part.

And your petitioners further show that by the proclamation of the President of the United States of August 10th, 1821, issued in pursuance of the joint resolution of Congress of March 2nd, 1821, the State of Missouri was admitted into the Union of the United States with limits embracing the lands aforesaid now claimed by your petitioners, which said lands are situated in the counties of Lincoln & Saint Charles, in said State, and within the jurisdiction of this court.

That on the 22nd of June, 1860, Congress passed an act entitled "An act for the final adjustment of private land-claims in the States of Florida, Louisiana, and Missouri and for other purposes," the first section
of which provides that persons claiming lands in any of the
17 said States, by virtue of grant, concession, order of survey, permission to settle, or other written evidence of title derived from the colonial government before cession to the United States, or while such government claimed sovereignty or had the actual possession of the country embracing the lands so claimed, may present their claims for confirmation to boards of commissioners provided for by the act.

That the 11th section of the said act provides in case of claims which might, under sec. 1, be presented to the commissioners, and where the lands claimed have not been in possession and cultivation by the original claimants or those holding under them for twenty years prior to bringing suit, the persons so claiming the same may, at their option, instead of filing their claims before the commissioners, proceed, by suit in the district court of the United States for the district in which the lands lie, by petition in the nature of a bill in equity, and require the United States to defend against the same by their district attorney for said district.

That said act authorizes the said district courts to take juris-
18 diction of all such claims as are in the 1st section particularly described, and by decree decide the same valid or invalid according to the principles established in the act, and as equity and justice shall require.

That sec. 6 provides that in all cases of confirmation under the act, where it shall appear that the lands claimed and the title to which may be confirmed have been sold by the United States prior to confirmation,

or where the surveyor-general of the district shall ascertain that the same cannot be surveyed and located, it shall be lawful for the successful claimant to make entries of the public lands of the United States, subject to private entry, at $1.25 per acre in lieu of the lands so sold by the United States.

That said act was limited to five years from its passage, & expired on the 22nd June, 1865, but was revived and re-enacted by the act of 2nd March, 1867, for three years longer, & again expired on the 2nd of March, 1870. That Congress again revived and amended the said act by the act of 10th June, 1872, entitled "An act to extend the provisions
19 of an act entitled 'An act for the final adjustment of private land claims in the States of Florida, Louisiana, and Missouri, and for other purposes,'" which act is still in force, and in virtue of which, and the act revived by it, this honorable court is invested with jurisdiction to hear and determine this suit.

That your petitioners, Henry & Cyprian Clamorgan, are the natural sons of Apauline or Pauline Clamorgan, who was a natural sister of the said Cyprian M. and Maximin Clamorgan, and your petitioners, Leon A. and Julius Clamorgan, are the legal sons and only heirs of their deceased father, Louis Clamorgan, who was a natural son of the said Apauline or Pauline, the natural sister as aforesaid of the said Cyprian M. & Maximin, and as such natural relations your petitioners have been made the legal and regular heirs in the proportions aforesaid, and by the act of the legislature of Missouri aforesaid, of the estates of the said Cyprian M. & Maximin Clamorgan, in lieu of the State to which said estates had escheated.

That as such they are entitled under the Constitution, treaties,
20 & laws of the United States, the decisions of the Supreme Court of the United States, the laws and ordinances & royal decrees governing the Spanish and French province of Louisiana, the usages & customs of the Spanish colonial authorities in relation to grants of lands therein, and especially under the provisions of the act of 22nd June, 1860, & the principles of equity, reason, and justice therein established as rules of decision, to a recognition and confirmation of the said grant or concession of the said three several tracts of land as a valid title against the United States.

And your petitioners further show that the said lands have not been in possession or cultivation by the original claimant or those holding title under him for twenty years prior to the filing of this petition. That, so far as is known to your petitioners, there never has been an actual survey made by Spain of the said tracts of land granted as aforesaid to the said Jacques Clamorgan, because, as your petitioners suppose, the accurate description of said lands in the petition, concession, and confirmation as aforesaid amounted to a severance from the
21 mass of the domain & defined & fixed the boundaries of the same, thus constituting a descriptive grant by metes and bounds, without designation as to quantity, which character of grants has been respected by the Supreme Court of the United States in the cases of the U. S. vs. Clarke, (Peters, 456), and Smith vs. United States (10 Peters, 326), & by many other decisions.

That said character of grants, to wit, descriptive grants, by expression of metes & bounds, irrespective of quantity, are specially provided to be confirmed by the 11th sec. of said act of 22nd June, 1860, which section includes the case of any grant, otherwise unobjectionable, claimed by any mode of investiture of title known to the Spanish authorities, in which there shall be a separation of the land granted from

the mass of the domain, by the competent authority prior to cession, which severance may be by actual survey, or by definition of fixed natural & ascertainable boundaries, or by definition of initial points, with courses and distances thence.

That said act of 1860 was fully discussed by the Supreme Court,
22 in its effect upon claims within its purview, in the case of the United States vs. Lynd's heirs (reported in 11 Wallace 630), in which case the court confirmed the title of Lynd to 32,025 arpens of land, although the same title had been sued on under the act of 26th of May, 1824 (applied to Louisiana by the act of 17th June, 1844), & on appeal to that court had been rejected on its merits, & for the reasons, as stated by the court, that the act did, ipso facto, confirm all claims within its purview; leaving to the courts but the office of identifying the claims, detecting fraud, and announcing by decree the mode & measure of relief.

Your petitioners herewith file and submit as a part hereof, in pursuance of section 1 of said act, a sworn statement by the claimants, marked D, referring to the plan or exhibit marked E, and showing the lands supposed to be covered by their claim according to the legal divisions and subdivisions of the surveys made by the United States.

Wherefore, the forgoing being duly considered, your petitioners respectfully pray that the United States be cited through their dis-
23 trict attorney for the eastern district of Missouri to answer this petition; and that after due proceedings had, the title of your petitioners to the three several tracts of land heretofore described, conceded to Jacques or Don Santyago Clamorgan by Don Zenon Trudeau, lieutenant-governor of Upper Louisiana, and confirmed and ratified by the governor-general, the Baron de Carondelet, on the 5th of April, 1797, be declared a valid and binding title against the United States.

That for so much of the said lands as shall be found to remain unsold or otherwise undisposed of by the United States, prior to confirmation, patents shall issue to your petitioners.

And that for so much of said lands as shall appear to have been sold or otherwise disposed of by the United States, or which may appear by the surveyor general of the proper district to be incapable of survey & location, your petitioners may be declared to have the right to locate in lieu thereof a like quantity of land, according to the provisions of sec. 6 of said act of 22d June, 1860, on any of the public lands of the United States subject to private entry at $1.25 per acre, according to
24 legal divisions & subdivisions.

And your petitioners pray for all costs and for all general equitable relief.

And, as in duty bound, will ever pray.

By their counsel.

R. H. & J. L. BRADFORD.
ALEX. D. ANDERSON.

James L. Bradford, being duly sworn, deposes and says that he has good reason to believe, and does believe, the facts and allegations of the foregoing petition are true.

JAMES L. BRADFORD.

Subscribed and sworn to by said affiant before me, at St. Louis, Mo., this 28th day of July, A. D. 1873.

F. A. WERNER,
Com'r U. S. Circuit Court, East'r Dist. of Missouri.

I hereby waive citation & accept service.

WM. PATRICK,
U. S. Att'y.
W. H. BLISS,
Ass't Att'y

JULY 28TH, 1873.

And afterwards, to wit, at a regular stated term of the district court of the United States for the eastern district of Missouri, begun and holden at the city of St. Louis, in said eastern district, on the first Monday, the 3rd day of November, A. D. 1873, the following further proceedings took place in this case on Wednesday, the 5th day of November, A. D. 1873, to wit:

Petition under acts of Congress of 22nd June, 1860, and 10 June, 1873.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, &C., DEFENDANTS. } No. 2225.

25 *Counsel withdrawn.*

This day come the parties, by their respective attorneys, and by consent Robert H. Bradford, esquire, one of the attorneys for the petitioners herein, withdraws as one of the counsel in said case.

And at last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Tuesday, the 21st day of April, A. D. 1874, to wit:

Demurrer filed.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, &C., DEFENDANTS. } No. 2225.

Petition under act 22d June, 1860, and act 10 June, 1873.

This day come the parties, by their respective attorneys, and by consent of said attorney, the United States, by district attorney, files its demurrer to the petition heretofore filed by the petitioners in this cause.

And the said demurrer so filed is in the words and figures following, to wit:

Demurrer.

In the district court of the United States for the eastern district of Missouri.

THE HEIRS OF JACQUES CLAMORGAN, PL'FF,
vs.
THE UNITED STATES, DEF'T.

Now comes the United States and appears to the bill of complaint of complainants.

And these defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of com-
26 plaint contained to be true, in such manner and form as the same are therein set forth and alleged, do demur to the said bill, and for cause of demurrer shows that the said complainants have not by their said bill made such a case as entitles them, in a court of equity, to any relief against these defendants, touching the matters contained in said bill or any such matters.

Wherefore these defendants do demur to said bill and to all matters and things therein contained, and prays the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill, and pray to be hence dismissed with their reasonable costs.

WM. PATRICK,
U. S. Attorney and Solict. for United States.

And afterwards, to wit, at a regular stated term of the district court of the United States for the eastern district of Missouri, begun and holden at the city of St. Louis, in said eastern district, on the first Monday, the fourth day of May, in the year of our Lord eighteen hundred and seventy-four, the following further proceedings took place in
27 this cause on Thursday, the 18th day of June, A. D. 1874, to wit:

Demurrer argued and submitted.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, &C., DEFENDANTS. } No. 2225.

Petition under acts 22 June, 1860, and 10 June, 1873.

This day come the said petitioners, by Alexander D. Anderson, esquire, their attorney, and also come the United States, by district attorney, and the demurrer heretofore filed by said United States to the petition of said plaintiffs in this cause having been taken up, the same is argued by counsel and submitted to the court, which not being fully advised of and concerning the premises, takes further time within which to consider of its judgment herein.

And afterwards, to wit, at last named regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this cause on Wednesday, the 1st day of July, A. D. 1874, to wit:

Demurrer overruled.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, &C., DEFENDANTS. } No. 2225.

On petition under acts of Congress of 22d June, 1860, & 10 June, 1873.

This day come again the parties, by their respective attorneys, and the court having examined the demurrer heretofore filed by said United States to the petition of said petitioners herein, and being fully advised

of and concerning the same, is of opinion that the law on said
28 demurrer is for the said petitioners, and in accordance with such opinion now orders that the said demurrer be, and the same is hereby, overruled.

Def't to plead on or before 7 Sept., '74.

And the court further orders that the said defendant, the United States, be required to answer or plead to the said petition herein on or before the first Monday, the seventh day of the month of September next.

And afterwards, to wit, at last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on Monday, the 6th day of July, A. D. 1874, to wit:

Leave to file an amended petition.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, &C., DEFENDANTS. } No. 2225.

Petition under acts of Congress of 22d June, 1860, and 10th June, 1873.

This day come the said petitioners, by Alexander D. Anderson, esquire, their attorney, and, on motion of said attorney, it is ordered that the said petitioners have leave to file an amended petition in this cause on or before the first Monday, the third day of the month of August next (1874).

And afterwards (in vacation) the following further proceedings took place in this case on Saturday, the 1st day of August, A. D. 1874, to wit:

Amended petition filed.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, &C., DEFENDANTS. } No. 2225.

Petition under acts of Congress of 22d June, 1860, and 10 June, 1873.

29 This day come the said petitioners, by their attorneys, and file an amended petition in this cause in accordance with the leave of the court heretofore granted them herein; and also file Exhibit New Plan F, and the affidavit of Henry Clamorgan to said Exhibit New Plan F.

And the said amended petition so filed is in the words and figures following, to wit:

Amended petition.

To the honorable judge of the United States district court for the eastern district of Missouri:

The amended petition of Henry Clamorgan, of Cyprian Clamorgan, of Leon A. Clamorgan, and of Julius Clamorgan, respectfully shows:

That since filing their petition in this cause it has come to the knowl-

edge of your petitioners that the sworn statement marked D & the plan E, filed with said petition as a part thereof, do not properly describe the lands granted to Don Jacques Clamorgan & herein sued for. That said grants are greater in extent than by said statement & plans represented, as your petitioners now show. That your petitioners file herewith as a part hereof, the new plan or ex'ibit marked F, together with the sworn statement marked G, truly describing the extent of the lands granted to said Jacques Clamorgan & now sued for. That
30 referring to said new plan, marked F, the parent or central tract is shown to extend from the Mississippi River westwardly to the headwaters of the Cuiver & Dardenne Rivers, which said two last rivers bound said central tract on the north & south, the western limit being the straight yellow line uniting the headwaters of said rivers, & represented on said plan by the letters D & E. That the upper lateral grant is represented on said plan as bounded on the south by the Cuiver River, & the south fork of said river (being the main or principal branch of the same), & on the north by the waving yellow line from B to C, which is intended to begin on the right bank of the Mississippi River at the distance, in a right line, of sixty lineal arpents above the mouth of the Cuiver River (designated by the letter A), & to extend to the headwaters of said river, parallel to & sixty lineal arpens therefrom, reaching to the point represented by the letter C, which is intended to be sixty lineal arpens from the fountain head of the Cuiver, & in a right line drawn from said fountain-head at right angles to the general course of said stream at that point. That the lower lateral grant is bounded on
31 the north by the Dardenne River, & partly by the Mississippi, & on the south by the waving yellow line drawn from F to G, which waving yellow line is intended to be drawn parallel to, & sixty lineal arpens from said Dardenne River, commencing at the point G, & extending as far as the headwaters of said river to the point F, the point F being intended to be sixty lineal arpens from the fountain-head of the Dardenne, & in a right line drawn through said fountain-head, & at right angles with the general course of said stream at that point, the point G being intended to be sixty lineal arpens from the Mississippi River, & in a right line drawn from the point H at right angles to the general course of said river at that point, said point H being intended to be on the right bank of the Mississippi River, sixty lineal arpens in a right line below the mouth of the Dardenne River.

That said new plan marked F ex'ibits the surveys of the United States in conflict with the grant to Clamorgan, as required by sec. 1 of the act of 22nd June, 1860, as fully & as accurately as your petitioners could represent the same, in the absence of an actual survey of the tract of land now sued for. That in said new plan F, the large squares
32 represent the townships, & the small squares the sections as known to the United States system of surveys, & that said three tracts or grants embrace the following townships and parts of townships, to wit: Townships 45, 46, 47, 48, & 49, of range 1 east; 46, 47, 48, & 49, of ranges 2 & 3 east; 46, 47, & 48, of range 4 east; 47 & 48, of range 5 east; 46, 47, 48, 49, & 50, of range one west; 47, 48, 49, & 50, of range 2 & 3 west; 48, 49, 50, & 51, of range 4 west; 49, 50, & 51, of range 5 west; 49, 50, 51, & 52, of range 6 west; 50 & 51, of range 7 west, & 51 of range 8 west, all being north of the base line & east & west of the 5th principal meridian in the State of Missouri.

By their counsel:

J. L. BRADFORD.
A. D. ANDERSON.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Alexander D. Anderson, one of the counsel for said petitioners, being duly sworn, deposes and says, that according to the best of his knowledge and belief the allegations contained in the foregoing petition are true.

A. D. ANDERSON.

Subscribed and sworn to by said affiant before me, at office in St. Louis, Missouri, this 3d day of August, A. D. 1874.

F. A. WERNER,
Commiss'r.

U. S. circuit court, eastern dist. of Missouri.

And the said affidavit of Henry Clamorgan to said Exhibit New Plan F, is in the words and figures following, to wit:

33 *Affidavit of Henry Clamargan to new plan F.*

Henry Clamargan, of St. Louis, Mo., being duly sworn, doth depose & say that the new plan marked F, filed with the amended petition in this cause, truly represents, to the best of his knowledge & belief, the three grants or tracts of land granted to Don Jacques Clamorgan on the 3rd of March, 1797, by Don Zenon Trudeau, lieutenant-governor of Upper Louisiana, as the same appears in conflict with the township & sectional surveys of the United States.

That the central or parent grant embraces all the land between the Cuiver River on the north & the Dardenne River on the south, fronting on the Mississippi River on the east, & extending westwardly to the headwaters of said first named rivers, & being limited in that direction by the right line (represented on said new plan by the letters D & E) uniting the headwaters of said streams.

That the upper central tract or grant is intended to be represented on said plan as bounded on the south by the river Cuiver proper, & the south or main branch of said river, from its mouth to its headwaters, fronting sixty lineal arpens on the Mississippi, & bounded on the north by the waving yellow line, drawn from the point B (intended to be
34 on the right bank of the Mississippi at sixty lineal arpens in a right line from & above the mouth of the Cuiver River) to the point C, parallel to the said Cuiver River & south fork of same, and sixty lineal arpents distant all the way. The point C is intended to be sixty lineal arpents from the fountain-head of said Cuiver River, & in a right line drawn through said source at right angles to the general course of said stream at that point.

The lower lateral grant or tract, as represented on said new plan, is bounded on the north by the Dardenne River & partly by the Mississippi, & on the south by the waving yellow line from G to F, intended to be parallel to & sixty lineal arpens from said river. The point F is intended to be sixty lineal arpents from the fountain-head of said Dardenne River, & in a right line drawn through said fountain-head at right angles to the general course of said stream at said point. The said point G is intended to be sixty lineal arpens from the point H, & in the right line G H, which said line is intended to be at right angles with the general course of the Mississippi at said point. The point H
35 is intended to the right bank of the Mississippi River, at the dis-

tance of sixty lineal arpents below the mouth of the Dardenne River, as represented by the letter I.

That in said new plan F the large squares represent the townships, & the small squares the sections, as known in the United States surveying system, & that said three tracts or grants embrace the following townships, to wit: Townships 45, 46, 47, 48, & 49 of range 1 east 46, 47, 48, & 49 of ranges 2 & 3 east; 46, 47, and 48 of range 4 east; 47 & 48 of range 5 east; 46, 47, 48, 49, & 50 of range one west; 47, 48, 49, & 50 of range 2 & 3 west; 48, 49, 50, & 51 of range 4 west; 49, 50, & 51 of range 5 west; 49, 50, 51, & 52 of range 6 west; 50 & 51 of range 7 west; & 51 of range 8 west, all being north of the base line & east & west of the 5th principal meridian in the State of Missouri.

HENRY CLAMORGAN.

Subscribed & sworn to before me at office this 1st August, 1874.

J. H. CLARK,
U. S. Comm'r E. Dist. Mo.

And afterwards, to wit (in vacation), the following proceedings took place in this case on Tuesday, the 27th day of October, A. D. 1874, to wit:

36 *Answer filed.*

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, &C., DEFENDANTS. } No. 2225.

Petition under acts of Congress of 22d June, 1860, and 10 June, 1873

This day come the parties by their respective attorneys, and by consent of said attorneys, the said United States, by district attorney, files its plea and answer to the petition heretofore filed in this cause.

And the said plea and answer so filed as aforesaid is in the words and figures following, to wit:

Plea and answer.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the United States district court for the eastern district of Missouri.

HENRY CLAMARGAN, CYPRIAN CLAMORGAN, Leon A. Clamorgan, and Julius Clamorgan, plaintiffs,
vs.
THE UNITED STATES, DEFENDANTS. } No. 2225.

The plea of defendants to the bill of complaint of complainants.

The defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' said bill mentioned to be true, in such manner and form as the same are therein and thereby set forth and alleged, do plead thereunto, and for plea say:

That it is not true that in consequence of the death of Cyprian M.

Clamorgan and Maximin Clamorgan intestate and without issue
37 or other lawful heirs, as is alleged in complainants' said bill, the right and title alleged and pretended to be in the said Cyprian M. and Maximin Clamorgan to the lands described in complainants' said bill escheated to the State of Missouri, as alleged; that it is not true that the said State of Missouri, by act of its legislature, of date the 23rd of March, A. D. 1863, did waive, or pretend to waive, or have to waive, a right to said lands by virtue of an escheat of the same to it, or relinquish said lands, or have the same to relinquish, to and in favor of said complainants.

That it is not true that by said act of the legislature of the State of Missouri said complainants, as natural relations of the said Cyprian M. and Maximin Clamorgan, if such, have been made their legal and regular heirs of the estate, alleged and pretended in said bill to have been in said Cyprian M. and Maximin Clamorgan, in and to the land described in said bill. That said act of the legislature is in the words and figures following:

An act for the relief of Henry Clamorgan, Cyprian Clamargan, and the heirs of Louis Clamorgan, deceased.

Whereas the administrator of Cyprian, Martial and Maxime Clamor-
gan did, on the day of December, 1859, sell to the highest
38 bidder all the right, title and interest of his intestates in and to a certain certificate of location, issued by the surveyor-general on the eighth day of August, in the year 1859, to Regis Loisel, or his legal representatives, for thirty-eight thousand one hundred and eleven and ten hundredths acres of land, located in the Territory of Kansas, for the sum of three thousand & six hundred dollars; and whereas the said Cyprian, Martial and Maxime Clamorgan, at the time of their decease, had no legal heirs according to the laws of inheritance of the State of Missouri, and their estate would, therefore, by law, escheat to the State of Missouri; and whereas Henry Clamargan, Cyprian Clamorgan, and the children of Louis Ciamorgan, deceased, are the sole natural heirs of the said Cyprian, Martial and Maxime Clamorgan, and alone have a natural claim to the estate of the said intestate estates: Therefore, be it enacted by the general assembly of the State of Missouri—

§ 1. That the court of probate of St. Louis County be authorized and directed, on application of the parties in interest, to hear testimony to ascertain who are the natural heirs or claimants of the estate of Cyprian, Martial and Maxime Clamorgan, the deceased intestates.

39 § 2. That when the natural heirs or claimants of said estates are ascertained, the said estates shall be administered and distributed among such natural claimants according to the laws of distribution in all respects as if said natural claimants were the legitimate and lawful heirs of said intestates.

§ 3. That the State of Missouri does hereby relinquish all claim to said estate by virtue of the law of escheats, or otherwise, in favor of the said natural claimants.

§ 4. That this act to take effect from and after its passage.

Approved March 23, 1863.

That the land mentioned in complainants' said bill was ceded by France to the United States on the 30th of April, A. D. 1803, by the treaty of Paris, as is admitted in said bill; that both Cyprian M. and Maximen Clamorgan, through whom complainants in said bill claim to

derive title to said lands by virtue of the act of the legislature of Missouri hereinbefore set forth, died many years prior to the date of the passage of said act of the legislature intestate and without lawful issue, and that upon the decease of said Cyprian M. and Maximin Clamorgan, as aforesaid, any claim which they or either of them might have
40 had to said lands died with them; and the title of defendants to said lands thereupon became fully vested, free and discharged of any pretended claim in and to the same in said Cyprian M. and Maximin Clamorgan; and that it was not in the power of the legislature of said State of Missouri, many years thereafter, by said act or any proceeding under the same, to divest, by declaring claimants to be the lawful heirs of said Cyprian M. and Maximin Clamorgan, the right of the defendants to hold said lands free and discharged from said pretended claim of said Cyprian M. and Maximin Clamorgan.

That the legislature of the State of Missouri had no lawful power to affect, as against defendants, by its legislation the course of descent or distribution of said lands; said lands being solely within the jurisdiction of the United States and their courts and laws.

That the title of said lands being in the United States by virtue of the treaty of Paris aforesaid, the same were not subject to the laws of the State of Missouri, and any equitable title which said Cyprian M. and Maximin Clamorgan might have had to the same did not escheat to the State of Missouri under the laws of said State, but unto
41 these defendants under the laws of the United States.

And these defendants not waiving their said plea, but wholly relying and insisting thereon, for answer to the residue of said complainants' bill, not hereinbefore pleaded unto, or to so much thereof as these defendants are advised is material or necessary for them to make answer unto, say:

That it is not true that by virtue of the act of the legislature of the State of Missouri dated the 23d day of March, 1863, the title to the lands described in said complainants' bill was invested in them by name as the legal heirs of said Cyprian M. and Maximin Clamorgan, deceased, as alleged, together with all the right, interest and estate held by said decea'd and in said lands, as alleged.

That it is not true that the estate in said lands, by virtue of said act of the legislature of the State of Missouri, vested in said complainants in the proportions as follows: Henry and Cyprian Clamorgan, one undivided third part, and to Leon A. Clamorgan and Julius Clamorgan, each one undivided sixth part, or in any proportions whatever. That it is not true that said lands, by virtue of said act of the legislature of Missouri, passed to the said complainant in lieu of the said
42 State of Missouri, or at all.

All which matters and things these defendants doth aver to be true, and plead the same to the whole of the said bill, and humbly demand the judgment of this honorable court whether they ought to be compelled to make any answer to the said bill of complaint, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

WM. PATRICK,
U. S. Att'y East. Dist. Mo.

And afterwards, to wit, at a regular stated term of the district court of the United States for the eastern district of Missouri, begun and holden at the city of St. Louis, in said district, on the first Monday, the second day of November, in the year of our Lord eighteen hundred and

seventy-four, the following further proceedings took place in this case on Monday, the 7th day of December, A. D. 1874, to wit:

Plea set down for argument.

HENRY CLAMORGAN ET AL., PETITIONERS,
agst.
THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

This day come the petitioners, by A. D. Anderson, esquire, their attorney, and on his motion in writing filed herein, it is ordered that the plea of respondent be set down for argument on the twenty-second day of December next.

43 And at last named regular stated term of said district court begun and holden as aforesaid the following further proceedings took place in this case, on Tuesday, the 22nd day of December, A. D. 1874, to wit:

Motion to overrule plea submitted.

HENRY CLAMORGAN ET AL., PETITIONERS,
agst.
THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

This day come the said petitioners, by Alexander D. Anderson, esquire, their attorney, and also comes the United States, by district attorney and the said petitioners, by their said attorney, moves the court to over, rule the plea of the said defendant filed herein on the 27th day of October last; and the said motion having been argued by counsel and submitted to the court, the court not being fully advised in the premises, takes further time within which to consider of its judgment therein.

And at last mentioned regular stated term of said district court begun and holden as aforesaid, the following further proceedings took place in this case, on Thursday, the 7th day of January, A. D. 1875, to wit:

Motion to overrule plea denied.

HENRY CLAMORGAN ET AL., PETITIONERS,
agst.
THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

44 This day came again the parties, by their respective attorneys, and the court upon consideration of the motion heretofore made by petitioners to overrule the plea of said defendant to the petition in this cause, and being fully advised of and concerning the same, now orders that the said motion be and the same is hereby denied.

And afterwards, to wit, at a regular stated term of the district court of the United States for the eastern district of Missouri, begun and holden at the city of St. Louis, in said eastern district, on the first Monday, the 3rd day of May, A. D. 1875, the following further proceedings took place on said date & year as aforesaid, to wit:

Amended petition filed.

HENRY CLAMORGAN ET AL., PETITIONERS, *agst.* THE UNITED STATES, &C., DEFENDANTS. } No. 2225. Petition for confirmation, &c.

45 This day com[illegible] the said petitioners by Alexander D. Anderson, esquire, their attorney, and with the leave of the court file an amended petition in this cause against the said defendants; and the said amended petition so filed as aforesaid is in the words and figures following, to wit:

Amended petition.

United States district court for the eastern district of Missouri.

HENRY CLAMORGAN ET ALS. *vs.* THE UNITED STATES. } No. 2225.

To the honorable judge of the United States district court for the eastern district of Missouri:

The amended petition of Henry Clamorgan, Cyprian Clamorgan, Leon A. Clamorgan, & Julius Clamorgan respectfully shows:

That since their petition was filed in this suit they have come into possession of facts touching their title to the lands claimed in said petition which a fair and just determination of this suit requires them to set forth and allege.

Your petitioners aver that Cyprian Martial Clamorgan left a last will and testament, which was duly probated, whereby he disposed of all his property, except some specific devises, to his sister, Apauline Clamorgan, & to her children, Louis, Henry, and Louisa.

That petitioners claim under said will, & as the heirs and legal representatives of Maximin & Cyprian Martial Clamorgan, having been made their lawful & regular heirs by virtue of the law of Mis-
46 souri, of the 23rd March, 1863, as in their petition alleged, and proceedings under the same.

That said act and proceedings are now set forth as a part of this amended petition, viz:

An act for the relief of Henry Clamorgan, Cyprian Clamorgan, & the heirs of Louis Clamorgan, deceased.

Whereas the administrator of Cyprian, Martial, and Maximim Clamorgan did, on the [illegible] day of December, 1859, sell to the highest bidder all the right, title, and interest of his intestates in and to a certain certificate of location, issued by the surveyor general on the 8th day of August, in the year 1859, to Regis Loisel or his legal representatives, for thirty-eight thousand, one hundred and eleven [illegible] ten hundredths acres of land, located in the Territory of Kansas, for the sum of three thousand six hundred dollars;

And whereas the said Cyprian, Martial, and Maxime Clamorgan, at the time of their decease, had no legal heirs, according to the laws of inheritance of the State of Missouri, and their estate would, therefore, by law, escheat to the State of Missouri;

And whereas Henry Clamorgan, Cyprian Clamorgan, and the children

of Louis Clamorgan, deceased, are the sole and natural heirs of
47 the said Cyprian, Martial, and Maxime Clamorgan, and alone have a natural claim to the estate of the said intestates' estates; therefore—

Be it enacted by the general assembly of the State of Missouri—

§1. That the court of probate of St. Louis County be authorized and directed, on application of the parties in interest, to hear testimony to ascertain who are the natural heirs or claimants of the estate of Cyprian, Martial, and Maxime Clamorgan, the deceased intestates.

§ 2. That when the natural heirs or claimants of said estates are ascertained, the said estates shall administered and distributed among such natural claimants according to the laws of distribution, in all respects as if said natural claimants were the legitimate and lawful heirs of said intestates.

§ 3. That the State of Missouri does hereby relinquish all claims to said estates by virtue of the law of escheats, or otherwise, in favor of said natural claimants.

§ 4. That this act to take effect from and after its passage.

Approved March 23rd, 1863.

That the proceedings of the probate court of St. Louis County under said act are as follows:

STATE OF MISSOURI,
County of St. Louis, ss:

In the probate court for the county of St. Louis, June term, 1863. Monday, June 22nd, 1863. James E. Mumford, administrator of
48 Cyprian M. Clamorgan, deceased.

Order to pay and appeal.

On the petition of Henry Clamorgan, and on due proof of notice to James E. Mumford, administrator de bonis non with the will of Cyprian Martial Clamorgan, and the court being satisfied that Henry Clamorgan, Cyprian Clamorgan, Leon Clamorgan, and Julius Clamorgan are the natural heirs of Cyprian Martial Clamorgan and Maximim Clamorgan, and in pursuance of and in conformity to an act of the gen'l assembly of the State of Missouri, approved 23d March, 1863, entitled "An act for the relief of Henry Clamorgan, Cyprian Clamorgan, and the heirs of Louis Clamorgan," do order that said administrators pay to said Henry Clamorgan and Cyprian Clamorgan each the sum of five hundred and thirty-three dollars thirty-three cents, and to Leon N. Clamorgan and Julius Clamorgan, children of Louis Clamorgan, each the sum of two hundred and sixty-six dollars sixty six cents; and thereupon said Mumford files his affidavit and prays an appeal from the judgment of the court in this case to the circuit court of the county of St. Louis, which is granted, and a certified transcript of the record
49 and proceedings in this case and the original papers in the same are ordered to be transmitted to the clerk of the circuit court of the county of St. Louis.

JAMES E. MUMFORD,
Administrator of Maximim Clamorgan.

Order to pay and appeal.

On the petition of Henry Clamorgan and on due proof of notice to James E. Mumford, administrator of Maximim Clamorgan, and the

court being satisfied that Henry Clamorgan and Cyprian Clamorgan, Leon Clamorgan and Julius Clamorgan, are the natural heirs of Cyprian Martial Clamorgan and Maximim Clamorgan, and in pursuance of and in conformity to an act of the gen'l assembly of the State of Missouri, approved 23rd March, 1863, entitled "An act for the relief of Henry Clamorgan, Cyprian Clamorgan and the heirs of Louis Clamorgan," do order that said administrator pay to said Henry Clamorgan and Cyprian Clamorgan each the sum of five hundred and thirty-three dollars thirty-three cents, and to Leon N. Clamorgan and Julius Clamorgan, children of Louis Clamorgan, each the sum of two hundred and sixty-six dollars sixty-six cents; and thereupon said Mumford appears and files his affidavit and prays an appeal from the judgment of the
50 court in this case to the circuit court of the county of St. Louis, which is granted and a certified transcript of the record and proceedings in the case and original papers in the same are ordered to be transmitted to the clerk of the circuit court of the county of St. Louis.

A true copy from the records of said court in my office remaining:
Attest with the seal of said court hereto affixed at office in the county aforesaid, this thirteenth day of January, 1875.
[SEAL.] W. E. WAGNER, *Clerk.*

That said proceedings are in full force & effect, the appeal taken from the same having been dismissed, or compromised, as will appear on the trial hereof. That petitioners claim said lands as the heirs and legal representatives of the said Maximin & Cyprian Martial, & they also claim under the foregoing law of Missouri, & proceeding thereunder, any and every right, interest, or estate which said State of Missouri may have acquired in said land by escheat, forfeiture, or otherwise. And your petitioners now aver that it is not in their power to allege with certainty the quantity of the land granted to the said Jacques Clamorgan which the United States have sold or disposed of, & the quantity
51 remaining unsold & undisposed of, because such information is solely in the possession of the said United States, and is to be found in the records of their surveying & land offices, of which they have exclusive custody.

That all of said lands have been surveyed as public lands of the United States, & all or nearly all disposed of by them to persons other than the petitioners, so that should their title to the same be confirmed, little or no part thereof could be patented to petitioners by the United States. That the act of Congress, under which your petitioners seek relief, contemplates the fixing by this honorable court of the proportions so disposed of & undisposed of by the United States, as the basis for granting full relief on final confirmation.

Wherefore your petitioners pray that a surveyor be appointed to survey the lands claimed, & to establish the boundaries thereof, by connecting the same with the surveys of the United States, in such manner as to exhibit the separate areas of the three several tracts claimed, and the quantity in each disposed of and undisposed of by the United States.

And they humbly pray that this their amended petition be allowed & filed, & as in duty bound, &c., &c.

By their counsel.

J. L. BRADFORD,
A. D. ANDERSON.

52 And afterwards, to wit, at last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case, on Wednesday, the 9th day of June, A. D. 1875, to wit:

Intervening petition.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, &C., DEFENDANT. } No. 2225.

Petition for confirmation, &c.

This day come Mary Tunstall and others, intervenors herein, by Messrs. Blakeman and Thayer, their attorney', and with the leave of the court file their intervening petition in this cause against the said defendants. And the said intervening petition so filed as aforesaid is in the words and figures following, to wit:

Intervening petition.

United States district court, eastern district of Missouri.

HEIRS OF JACQUES CLAMORGAN
vs.
THE UNITED STATES. } No. 2225.

Now in this cause, by leave of the court first had and obtained to file this their petition in the nature of an intervention, come Mary Tunstall, widow of Thomas M. Tunstall, deceased, late of the county of St. Louis, State of Missouri, George Baker and Ellen his wife, Mary Robbins and Robert Tunstall, all of said county of St. Louis, and the heirs of said Thomas M. Tunstall, and Prior Q. Tunstall, of Bexar County, Texas, John P. Tunstall, of Jefferson County, Mississippi, and Presley J. Edwards and Mary J. his wife, of Montgomery County, Illinois,
53 heirs of Mary P. Tunstall, deceased, late wife of Warrick Tunstall, and respectfully show to the court that they are the legal owners of and are entitled to one sixth of the lands and rights set forth and described in the petition of the complainants herein.

That on the sixteenth day of August, A. D. eighteen hundred and forty-three, Henry Clamorgan and his wife, and Louis Clamorgan and his wife, parents of Leon A. and Julius Clamorgan, claimants as set forth in their said petition herein, sold and conveyed to said Warrick Tunstall all their right, title, and interest in and to one undivided fourth part of the lands and rights aforesaid by deed, a copy whereof is herewith filed, marked Exhibit A, and made a part of this petition.

That on the first day of October, eighteen hundred and forty-four, the said Warrick Tunstall and wife, then of the said county of St. Louis, sold and conveyed to said Thomas M. Tunstall, then of Louisville, Kentucky, two-fifths ($\frac{2}{5}$) of all the right, interest, and estate he acquired by virtue of the conveyance last aforesaid, as will appear by his deed, a copy of which is filed herewith, marked Exhibit B, and made a part of this petition.

54 The said Warrick Tunstall conveyed all the interests and rights remaining in him to the lands and rights aforesaid by deed dated ninth of December, eighteen hundred and forty-six, to Charles R. Hall,

late of said county of St. Louis, in trust for the purposes in said deed mentioned, and for the sole use and benefit of his wife, the said Mary P. Tunstall, as will appear by the said deed, a copy of which is herewith filed and made a part of this petition.

That the said Mary J., Edward, Prior Q., and John P. Tunstall are the sole heirs of the said Mary P. Tunstall, deceased. That the said Charles R. Hall is now deceased, and by his death the said trust has lapsed, and they have become the absolute owners of the estate & conveyed by the said deed of trust aforesaid. That these petitioners admit and aver the truth of the statements and allegations made by the said complainants in their petition herein, except so far as the same may be in conflict with the rights and interests of these petitioners as stated and set forth herein.

Wherefore your petitioners pray that the court will by its decree declare the title to the lands and interests set forth in the petition of said complainants to be and vest in the legal representatives of the
55 said Jacques Clamorgan, and will assign and decree to these petition'rs their just proportion of said lands and rights according to their respective interest as hereinbefore set forth, to wit, one tenth of all the lands and rights aforesaid to the heirs of the said Mary P. Tunstall as aforesaid, and one one-fifteenth of all the lands and rights aforesaid to the heirs of the late Thomas M. Tunstall as aforesaid.

And your petitioners pray for all costs and for all general and equitable relief.

BLAKEMAN & THAYER,
Counsel for Petitioners.

T. Z. Blakeman, being duly sworn, deposes and says he has good reason to believe and does believe the facts and allegations of the foregoing petition are true.

T. Z. BLAKEMAN.

Subscribed and sworn to before me at St. Louis, this 9th day of June, 1875.

F. A. WERNER,
Comm'r U. S. Circuit Court Eastern Dist. of Missouri.

And the said Exhibit A, filed with the said petition of intervention of Tunstall et al., is in the words and figures following, to wit:

EXHIBIT A.—*Intervention of Tunstall et al.*

This indenture, made and entered into sixteenth day of August, eighteen hundred and forty three (1843), by and between Louis Clamorgan & Julia, his wife, and Henry Clamorgan & Harriet, his wife, heirs and legal representatives of Jacques Clamorgan, Cyprian M., & Maxi-
56 min Clamorgan, and Appoline Clamorgan, the mother of said Louis & Henry, parties of the first part, and Warren Tunstall, party of the second part, all of the city and county of Saint Louis and State of Missouri, witnesseth:

That the said parties of the first part, in consideration of the sum of sixteen thousand dollars to them in hand paid, the receipt whereof is hereby acknowledged, by the said party of the second part, the said parties of the first part hath this day sold, bargained, and conveyed, aliened, and forever quitclaimed unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest and estate,

claim, and demand to one undivided fourth part of their interest, jointly and severally, which they have inherited as heirs aforesaid in and to a certain tract of land lying and being in the counties of Lincoln & Saint Charles Counties, in the State of Missouri, and bounded as follows:

Commencing at a point sixty arpens below the mouth of the Dardenne River on the margin of the Mississippi River, and running northwardly along the bank of the Mississippi to a point sixty arpens above the mouth of the Quivre or Copper River; thence drawing two lines from these two points in a westwardly direction, the one from the
57 south point forming the south boundary of said land, and the one drawn from the north point forming the north boundary of said land; these two lines to be drawn in a westerly direction until they each in their respective courses shall reach a point 200 (two hundred) arpents beyond the foot of the first hills; thence drawing a straight line so as to connect these two extreme western points, and forming thereby the western boundary of said land, so as to include all the waters of the two streams, Dardenne & Quive Rivers, said tract of land containing four hundred and forty-eight thousand (448,000) arpens of land, more or less, and is the same land conceded by Don Zemon Trudeau, li'ut. governor of Upper Louisiana, and ratified by El. Baron de Carondelet, gov. gen'l of Louisiana, in the year 1797, as will more fully appear by reference to the records of the recorder of land titles of Missouri, at Saint Louis, said grant of land being as yet unconfirmed.

To have and to hold to the said party of the second part, his heirs and assigns forever, the said undivided fourth part herein conveyed of the interest & title of the said parties of the first part in and to the aforedescribed tract of land, and the said parties of the first part will warrant and defend the title to the same against all person' claiming
58 under them and through them, but against no other person or persons whatever, nor against the United States.

L. CLAMORGAN. [SEAL.]
JULIA CLAMORGAN. [SEAL.]
HENRY CLAMORGAN. [SEAL.]
HARRIET CLAMORGAN. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered, that on this twenty-sixth day of August, in the year eighteen hundred and forty-three, before me the undersigned, clerk of the St. Louis court of common pleas, within & for said county, came Louis Clamorgan and Julia Clamorgan, his wife, Henry Clamorgan and Harriet Clamorgan, his wife, who are each personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they severally acknowledged the same to be their act and deed for the purposes therein mentioned.

She, the said Julia, wife of said Louis Clamorgan, and the said Harriet, wife of said Henry Clamorgan, having been first made acquainted with the contents thereof, severally acknowledged, on an examination separate and apart from their said husbands, that they executed said deed and relinquish their dower in the real estate therein mentioned freely, voluntarily, and without any fear or compulsion or undue influence of their said husbands.

59 In testimony whereof I hereunto set my hand and affix the seal of said court at office in the city of St. Louis, this twenty-sixth day of August, A. D. eighteen hundred & forty-three.

[L. S.] NATHANIEL PASCHALL, *Clerk*,
By STEPHEN D. BARLOW, *Dep. Clk.*

Filed for record, August twenty-eighth, eighteen hundred and forty-three.

STATE OF MISSOURI,
County of St. Charles:

RECORDER'S OFFICE.

I, John K. McDearmon, clerk of the county court & ex-officio recorder for said county, certify the foregoing to be a true, full, & correct copy of the record of a deed and acknowledgement from L. & H. Clamorgan & wife to Warrick Tunstall, as the same remains on record in my office in book "Q,"[1] p. 182.

Witness my hand and seal of office, this June 7th, A. D. 1875.

JNO. K. McDEARMON,
Clerk Co. C't and Recorder.

And the said Exhibit B, filed with the said petition of intervention of Tunstall et al., is in the words and figures following, to wit:

EXHIBIT B.—*Intervention of Tunstall et al.*

This indenture, made and entered into this first day of October, in the year eighteen hundred and forty-four, by and between Warrick Tunstall and Mary P. Tunstall, of the city of St. Louis and State of Missouri, of the first part, and Thomas M. Tunstall, of the city of Louisville and Commonwealth of Kentucky, of the second part, witnesseth:

That whereas Henry Clamorgan and Louis Clamorgan, de-
60 visees of Cyprian M. Clamorgan, have heretofore sold and conveyed to said Warrick one-fourth part of their interest and estate in and to a certain tract of land situate and being in the counties of St. Charles & Lincoln, in the State of Missouri, and lying between and including the waters of the rivers Dardenne and Quivre, and fronting on the Mississippi River, being the same land granted to Jacques Clamorgan on the third day of March, in the year 1793, by Lieutenant-Governor Zenon Truedeau, but which remains unconfirmed to the representatives of said Jacques Clamorgan by the Government of the United States:

Now, for and in consideration of the sum of four thousand dollars in hand paid to the said parties of the first part by the said party of the second part, the receipt whereof is hereby acknowledged, the said parties of the first part have bargain', sold, enfeoffed, and conveyed, and do by these presents bargain, sell, enfeoff, and convey to the said party of the second part and to his heirs and assigns, two fifth parts ($\frac{2}{5}$) of all the right, title, and estate in and to the above described tract of land conveyed to the said Warrick by the said Henry and Louis Clamorgan as aforesaid;

61 To have and to hold the said land, with all the privileges and appurtenances thereunto belonging, to the said party of the second part and to his heirs and assigns forever.

And the said parties of the first part warrant and defend the title to the said land against all persons claiming legally under or through them, but against none other.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WARRICK TUNSTALL. [SEAL.]
MARY P. TUNSTALL. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on the seventh day of October, eighteen hundred and forty-four, before me, the undersigned, clerk of the county court, within and for said county, came Warrick Tunstall and Mary P. Tunstall, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned. She, the said Mary P. Tunstall, being first made acquainted with the contents of said conveyance, acknowledged, on an examination apart from her said husband, that she executed the same & relinquished her dower in the real estate
62 therein mentioned freely and without compulsion or undue influence of her said husband.

In testimony whereof I hereto set my hand and affix the seal of said court at office, in St. Louis, the date above written.

[L. S.] S. D. BARLOW, *Clerk.*

Filed for record February 3d, 1845.

STATE OF MISSOURI,
County of St. Charles, ss:

RECORDER'S OFFICE.

I, John K. McDearmon, clerk of the county court & ex-officio recorder for said county, hereby certify the foregoing to be a full, true, & correct copy of the record of a deed & acknowledgement from Warrick Tunstall & w. to T. M. Tunstall, as the remains on record in book R., p. 112.

Witness my hand & official seal this June 7th, 1875.

[SEAL.] JNO. K. McDEARMON,
C'lk Co. C'k & Recorder.

And the said Exhibit C, filed with the said petition of intervention of Tunstall et al., is in the words and figures following, to wit:

EXHIBIT C.—*Intervention of Tunstall et al.*

This deed, made and entered into this twenty-ninth day of December, in the year eighteen hundred forty-six, by and between Warrick Tunstall and Mary P. Tunstall, his wife, of the first part, and Charles R. Hall, of the second part, all of the county of St. Louis, and State of Missouri, witnesseth:

That the said parties of the first part, for and in consideration of the trusts and uses hereinafter created and declared and of the
63 sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, aliened, and conveyed, and do, by these presents, grant, bargain, sell, alien, and convey unto the said party of the second part, and to his heirs, executors, administrators, and assigns, all the right, title, and interest, which they, the said parties of the first part, have in and to a certain tract of land lying and being in the counties of St. Charles and Lincoln, State of Missouri, and bounded as follows, to wit:

On the east by the Mississippi River, on the south by a line to be run from a point sixty arpens south of the mouth of the Dardenne River westward to a point 200 arpens beyond the bluffs, on the north by a line to commence sixty arpens north of the mouth of the Cuivre River, and

run westward to a point two hundred arpens beyond the bluffs, and on the west by a line connecting the western ends of the above lines so as to include the waters of the said Dardenne and Cuivre Rivers, being the same land that was granted to Jacques Clamorgan by Zenon Treaudeau in the year 1797, and the interest of the said parties of the first part being something more than one-eighth of the whose grant;

64 To have and to hold the said land with the appurtenances unto the said party of the second part, his heirs, executors, administrators and assigns, forever, to the uses and purposes hereinafter declared, and to no other use or purpose whatever.

Whereas the said Warrick Tunstall has contracted and owes various large sums of money, for the payment of which in the most prompt, full, and impartial manner her desires to provide, the said party of the second part shall hold the said land or claims until he can make an advantageous sale or other disposition, at his discretion, to procure money for the same, out of which he shall pay off and discharge any debt or debts of the said Warrick Tunstall remaining unpaid. Should a residue of money remain in the hands of the said party of the second part after the payment of the said debts, he shall lend out the same secured upon real estate or invest it in productive property as he may deem fit, subject only to the instructions in writing of the said Mary P. Tunstall, and shall continue to hold and receive the profits of said loan or investment to the sole and separate use and benefit of said Mary.

In case of the death of said Mary said Warrick surviving, the

65 said party of the second part shall transfer and convey by a good and sufficient deed of conveyance unto the said Warrick Tunstall all the credits or property, real and personal, acquired and thus held by virtue hereof, and the said party of the second part, his heirs, executors, administrators, or assigns, shall at any time after the payment of the debts of said Warrick when requested, in writing, by the said Mary, transfer and convey to herself or any other person she may designate, either absolutely or in trust, as she may direct, the credits or property aforesaid.

In testimony whereof the said parties of have hereunto set their hands and seals the day and year first above written.

WARRICK TUNSTALL. [SEAL.]
[SEAL.]
[SEAL.]

IN STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this thirteenth day of December, in the year one thousand eight hundred and forty-six, before the undersigned, clerk of the circuit court within and for the county aforesaid *within and for the county aforesaid*, personally appeared the within named Warrick Tunstall, who is known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, &

66 acknowledged the same to be his act and deed, hand and seal, for the purposes therein expressed.

In testimony whereof I hereto set my hand and affix the seal of said court at office in the city of St. Louis, the day and year above written.

[L. S.] JNO. RULAND, *Clerk.*

Filed for record, January second, eighteen hundred and forty-seven.

STATE OF MISSOURI,
County of St. Charles, ss:

RECORDER'S OFFICE.

I, John K. McDearmon, clerk of the county court and ex officio recorder for said county, hereby certify the foregoing to be a true & correct copy of the record of a deed & acknowledgment from W. Tunstall to C. R. Hall, as the same remains on record in this office, book S., p. 305.

Witness my hand & official seal this June 7th, 1875.

[SEAL] JNO. K. McDEARMON,
Co. Clk & Recorder.

And afterwards, to wit, at a regular stated term of the district
67 court of the United States for the eastern district of Missouri, begun and holden at the city of St. Louis, in said eastern district, on the first Monday, the first day of November, in the year of our Lord eighteen hundred and seventy-five, the following further proceedings took place in this case on Monday 6th day of December, A. D. 1875, to wit:

Answer filed.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, &C., DEFENDANTS. } No. 2225.

Petition for confirmation of title.

This day comes the United States, by district attorney, and, with the leave of the court, files its answer to the petition of said petitioners heretofore filed in this cause. And the said answer of said United States so filed is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA,
Eastern District of Missouri:

In the district court of the United States for the eastern district of Missouri, November term, 1875.

HENRY CLAMORGAN AND OTHERS, PETITIONERS,
v.
THE UNITED STATES OF AMERICA, DEFENDANT.

Now comes said defendant by David P. Dyer, esq., attorney of the United States for the eastern district of Missouri, and saving and reserving to said defendant all and all manner of benefit and advantage of exception to the manifold errors, uncertainties, misstatements and imperfections in the petition of said petitioners contained, for answer
68 thereto or so much thereof as defendant is advised is material for defendant to answer unto, answereth and saith as follows:

Defendant denies that the said Jacques or Don Santyago Clamorgan, dec'd, mentioned in the petition, is the ancestor of the said petitioners; denies that on the first day of March, 1797, said Clamorgan presented

his petition to the lieutenant governor of Upper Louisiana, praying for a grant or concession of land as stated by said petitioners; denies that the said several tracts of land alleged to have been prayed for by said Jacques or Don Santyago Clamorgan were granted and conceded to him on the 3d day of March, 1797, by Zenon Trudeau, lieutenant governor of Upper Louisiana, as alleged in the petition of said petitioners; denies that the governor-general, the baron of Carondelet, confirmed and ratified the alleged concession in all or any of its parts, in the manner stated by the said petitioners in their said petition; denies that under the laws, ordinances and customs in force in the province of Louisiana at the dates of the alleged concession and decree of confirmation the lieutenant-governor and governor-general had full power and authority to make valid concessions and grants of the royal domain without any known limit as to quantity as stated by said petitioners; denies that the
69 said Don Santyago Clamorgan became invested with a complete, perfect, and indefeasible estate and title in and to the three tracts of land described in his said alleged petition and referred to and described in said alleged concession and confirmation; denies that said Clamorgan exercised over said lands the rights of ownership, or over any part thereof.

And said defendant, further answering, but not admitting that the said Jacques Clamorgan, by virtue of any of the matters and things stated in said petition or otherwise, ever had any right, title, interest, or estate in and to the lands in the said petition mentioned, or any part thereof, either in law or equity, admits that on the 20th day of October, 1813, the Jacques Clamorgan sold and transferred all his rights to said land and to the said decrees of concession and confirmation to Jean Eli Tholosan by deed of that date, recorded in the recorder's office of the district of St. Charles, in which district said lands were situated, in which deed said lands are stated to have an estimated extent of 443,000 arpens, which deed was recorded as aforesaid in Book C, at page 380, on the 1st day of March, 1816.

And said defendant, further answering, says that the said Jean Eli Thologan, on the 9th day of May, 1816, by deed of that date,
70 in consideration of the sum of $2,000, conveyed the said lands so before conveyed to him by the said Jacques Clamorgan to Louis Labeaume by deed duly recorded in the recorder's office of the then district of St. Charles, on the 9th day of May, 1816, in Book C, at page 475, by virtue of which said last-named conveyance the heirs and legal representatives of the said Louis Lebeaume became and are entitled to whatever rights the said Jacques Clamorgan and Jean Eli Tholosan had in and to said lands and concession and confirmation, if ever any they, or either of them, had. And said defendant, further answering, says that it is true that the said Jean Eli Tholosan, on the 24th day of October, 1813, attempted to convey to Cyprian M. and Maximin Clamorgan all his rights under the said sale from Jacques Clamorgan to the said Jean Eli Tholozan, but that the said deed was and is fraudulent and void as against the said Louis Labeaume, the subsequent purchaser from the said Jean Eli Tholosan for the valuable consideration of $2,000, for the reason that the said deed was not recorded in the recorder's office of the then district of St. Charles, when said lands were then lying, and being within twelve months after
71 the execution of said deed and before the proving and recording of the deed from the said Jean Eli Tholosan to the said Louis Lebaume; said deed from said Jean Eli Tholosan to said Clamorgan was not recorded in the recorder's office of said district until the 14th

day of October, 1816, at which last-named date it was recorded in the recorder's office of said district in Book D, page 76. And said defendant, further answering, admits that the said Cyprian M. and Maximim Clamorgan died, both intestate and without issue or other lawful heirs capable in law or equity of inheriting any real or personal estate, or any interest therein, and therefore deny that the said petitioners, by reason of any matters or things stated in their said petition, or by other reason, are entitled to the relief sought for and demanded by their said petition.

And said defendant, further answering, says that it is true that there has never been an actual survey made by Spain of the said tracts of land alleged to have been granted to said Jacques Clamorgan, which survey, to be made by the surveyor of the western part of Illinois, was a condition precedent to the title of concession, as appears from the alleged grant by Lieut. Gov. Trudeau to said Jacques Clamorgan,
72 which concludes as follows: "The surveyor of this jurisdiction (as soon as the occupation of his place will permit) shall survey in favor of the interested party the extent of land he solicits in the way and manner described in the foregoing document, which, together with the plat and certificate of survey and of the boundaries which shall be set to said land, will form the title of concession, which in due time he shall have to lay before the general government of the province in order to get its approbation and record."

And defendant, further answering, says that there never was a separation of the said lands alleged to have been granted to the said Jacques Clamorgan as aforesaid from the mass of the public domain by any competent authority prior to the cession to the United States of the territory in which said lands were included, but that on the contrary the claim of the said Jacques Clamorgan never was recognized by such authority prior to said cession as having been so separated, for the reason that subsequent to the 3d day of March, 1797, and before said cession, repeated grants of large tracts of land were made by the governments claiming authority within the boundaries of the alleged
73 grant to said Clamorgan; nor has there been any such separation since the said treaty of session by any authority of the said United States; nor has the United States nor any of its authorized commissioners or agents ever recognized the alleged grant to said Jacques Clamorgan as a valid grant or claim either in law or equity, but have constantly repudiated and ignored the same by act of Congress, by unfavorable report and rejection of the claim when presented for confirmation, and by the recognition and confirmation of a large number of junior grants and claims within the boundaries claimed by the said petitioners.

And the said defendant for answer to the first amended petition of said plaintiffs, whilst admitting that as claimed by plaintiffs in said amended petition, it is true that the sworn statement D and plan E, filed with the original petition of said plaintiffs, do not properly describe the lands alleged to have been granted as aforesaid to said Jacques Clamorgan, said defendant also avers and claims that the said alleged grants are not greater in extent than by statement D and plan E are shown; that the lines and boundaries as shown by the plan F,
74 referred to in said amended petition, and claimed in said amended petition to be correct, embrace an area of 600,000 acres or more, much larger in extent than was ever claimed by the said Jacques Clamorgan, and not warranted in any manner by anything contained in his alleged grant.

And for answer to the second amended petition of the said petitioners defendant says, that defendant has no knowledge of the fact alleged therein that said Cyprian Martial Clamorgan left a last will, or that said last will was duly probated, whereby he disposed of all his property, except some specific devises, to his sister Apauline Clamorgan and to her children, Louis Henry and Louisa, or that petitioners, who claim under said last will and as the heirs and legal representatives of Maximim and Cyprian Martial Clamorgan, have been made their lawful and regular heirs by virtue of the law of Missouri of the 23d March, 1863, and proceedings under the same; but deny that said alleged last will and the said act of the general assembly of the State of Missouri, and the said proceedings alleged to have been had thereunder by the St. Louis probate court, have the effect in any manner to constitute
75 the said Henry Clamorgan, Cyprian Clamorgan, Leon Clamorgan, and Julius Clamorgan, lawful heirs of the said Cyprian Martial Clamorgan and Maximim Clamorgan; deny that said proceedings are in full force and effect, or that they have any force and effect, or that the said petitioners have acquired any rights thereunder as against the said defendant.

And said defendant further answering denies that all or nearly all of the lands claimed by the said petitioners have been surveyed and sold as public lands of the United States, but avers that a large number of private land claims have been surveyed and confirmed within the lines and boundaries of said grant as claimed by the said petitioners.

And said defendant further answering generally says, that the inducement to the making of said alleged grant was as stated in the alleged petition of said Jacques Clamorgan to said Lieut. Gov. Don Zenon Trudeau, that the said petitioner might erect saw and grist mills on said rivers La Charette alias Dardenne and Cuivre, and place there a number of cattle, and have slaughter houses and send salt meat to the capital, and that certain benefits which might arise therefrom were the consid-
erations moving the said lieutenant-governor to make said alleged
76 grant as shown by the petition of the said petitioners, but defendant denies that the said Jacques Clamorgan ever erected any saw or grist mills on said rivers, or placed any cattle there, or had any slaughter houses on said rivers or lands, or sent salt meat to the capital, or in any manner carry out in good faith the terms of the said inducement.

Wherefore and by reason of the said several premises hereinabove stated the said defendant says that the said petitioners are not entitled to the relief prayed for in their said petition, nor to any other relief in the premises, and having fully answered prays to be hence dismissed with judgment for costs.

DAVID P. DYER,
United States Att'y.

And at last mentioned regular stated term of said district court, begun and *and* holden as aforesaid, the following further proceedings took place in this case on Monday, the 3d day of January, 1876, to wit:

Replication filed.

HENRY CLAMORGAN ET AL., PETITIONERS,
agst.
THE UNITED STATES, &C., DEFENDANTS. } No. 2225.

Petition for confirmation of title.

This day come the said petitioners, by Messrs. Bradford and Ander-

77 son, their attorneys, and file their replication to the answer heretofore filed by the United States in this cause. And the said replication so filed is in the words and figures following, to wit:

Replication.

United States district court for the eastern district of Missouri.

HENRY CLAMORGAN ET ALS. *vs.* THE UNITED STATES. } No. 2225.

The replication of Henry Clamorgan et als., plaintiffs in the above entitled suit, to the answer of David P. Dyer, attorney of the United States, defendants.

These replicants, saving unto themselves all & all manner of advantages & exceptions to the manifold insufficiency of the said answer, for replication thereunto say, that they will aver & prove their said petition or bill to be true, certain & sufficient to be replied unto, and that said answer of the defendants is uncertain, untrue & insufficient to be replied unto by these replicants; without this, that any other matter or thing whatsoever in said answer contained, material or effectual in law to be replied unto & herein not replied unto, confessed & avoided, traversed or denied, is true. All which matters and things these replicants are & will be ready to aver & prove as this honorable court shall award; and pray as in and by their said petition or bill they have already prayed.

By their counsel.

JAMES L. BRADFORD.
A. D. ANDERSON.

78 And afterwards, to wit, at a regular stated term of the district court of the United States for the eastern district of Missouri, begun and holden at the city of St. Louis, in said eastern district, on the first Monday, the first day of May, in the year of our Lord eighteen hundred and seventy-six, the following further proceedings took place in this cause on Tuesday, the second day of May, in the year of our Lord eighteen hundred and seventy-six, to wit:

Consolidation of causes.

HENRY CLAMORGAN, CYPRIAN CLAMORGAN, Leon A. Clamorgan and Julius Clamorgan, petitioners, *ag'st* THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

HENRY T. BLOW, J'R, SOCRATES NEWMAN, Adele La Beaume, Louis T. La Beaume, George La Beaume, Louise La Beaume, Edmund La Beaume, William La Beaume, Eugenia La Beaume, Mary La Beaume, Susan La Beaume, Augustus Jacobson, Alexander La Beaume, petitioners, *ag'st* THE UNITED STATES, DEFENDANT. } No. 2673. Petition.

This day come the petitioners herein by J. L. Bradford, A. D. Ander-

son and Hiram J. Grover, esquires, their attorneys, and also comes the United States, by district attorney, and by consent of said attorneys, it is ordered that the above entitled causes be and the same
79 are hereby now consolidated for the purposes of trial.

And it is further ordered that the answer filed by the said respondent in case (No. 2225) of Henry Clamorgan et al. against the United States shall stand as the answer in said case (No. 2673) of Henry T. Blow, j'r, et al. against the United States, as far as the same is applicable, reserving the determination of the rights of the respective parties for future consideration.

And afterwards, to wit, at last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case, on Monday, the 12th day of June, A. D. 1876, to wit:

Withdrawal of counsel as to plaintiff Cyprian Clamorgan.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

This day come J. L. Bradford and A. D. Anderson, esquires, and with the leave of the court, and on their motion in writing this day filed herein, withdraw from the record as counsel for Cyprian Clamorgan, one of the plaintiffs in the above entitled cause.

And afterwards, to wit, at last named regular stated term of said district court, begun and holden as aforesaid, the following proceedings took place in this case, on Monday, the 19th June, A. D. 1876, to wit:

80 *Hearing of causes in part.*

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

HENRY T. BLOW, J'R, ET AL., PETITIONERS,
ag'st
THE UNITED STATES, DEFENDANT. } No. 2673. Petition.

This day come the said petitioners, by J. L. Bradford, A. D. Anderson and Hiram J. Grover, esquires, their attorneys, and also comes the United States, by district attorney, and the above entitled causes, as heretofore consolidated, coming on to be heard, the same are thereupon in part heard upon the pleadings and proofs therein, and the hearing thereof not being concluded at the hour of adjournment, it is ordered that the further hearing thereof be continued until to-morrow morning.

And afterwards, to wit, at said last named regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on Tuesday, the 20th day of June, A. D. 1876, to wit:

Further hearing of causes.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

HENRY T. BLOW, J'R. ET AL., PETITIONERS,
ag'st
THE UNITED STATES, DEFENDANT. } No. 2673. Petition.

81 This day come again the parties, by their respective attorneys, and the hearing of these causes, as heretofore consolidated, having been resumed, the same were further heard upon the pleadings and proofs therein, but the hearing thereof not being concluded at the hour of adjournment, it is ordered that the further hearing thereof be continued until to-morrow morning.

And afterwards, to wit, at last-mentioned regular stated term of said district court begun and holden as aforesaid, the following further proceedings took place in this case on Wednesday, the 21st day of June, A. D. 1876, to wit:

Further hearing of causes.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

HENRY T. BLOW, JR., ET AL., PETITIONERS,
ag'st
THE UNITED STATES, DEFENDANT. } No. 2673. Petition.

This day come again the parties by their respective attorneys, and the hearing of these causes, as heretofore consolidated, having been again resumed, the same were further heard upon the pleadings and proofs therein, but the hearing thereof not being concluded at the hour of adjournment, it is ordered that the further hearing
82 thereof be continued until to-morrow morning.

And afterwards, to wit, at said last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on Thursday, the 22d day of June, A. D. 1876, to wit:

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

HENRY T. BLOW, JR., ET AL., PETITIONERS,
ag'st
THE UNITED STATES, DEFENDANT. } No 2673. Petition.

This day come again the parties, by their respective attorneys, and the hearing of these causes, as heretofore consolidated, having been again resumed, the same were further heard upon the pleadings and proofs therein, and the hearing thereof having been concluded, and the arguments of counsel having been heard, the said causes were thereupon submitted to the court, and the court not being fully advised in the premises, took further time within which to consider of its judgment thereon.

Appointment of expert.

And thereupon, on motion of attorneys for said petitioners, it is ordered that William H. Cozens be and hereby is appointed as ex-
83 pert to estimate and report to the court the respective quantities of land which would be embraced within actual surveys made in pursuance of the lines as represented upon the maps and plans referred to in the stipulations filed, to wit: Plans E, F, H, I, J, and K.

Dismissal of intervention of Tunstall et al.

HENRY CLAMORGAN ET AL., PETITIONERS, *ag'st* THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

This day comes Samuel M. Breckinridge, esquire, a solicitor of record in this court, and enters his appearance as solicitor and attorney of Mary Tunstall, Mary Robbins, and Robert Tunstall, Pryor L. Tunstall, John P. Tunstall, Pressley J. Edwards, and Mary J. Edwards, and also comes Michael Kinealy, esquire, a solicitor of record of this court, and enters his appearance as solicitor and attorney for George Baker and Ellen Baker, his wife, all of whom are intervenors in the above-entitled cause, by petition of intervention filed herein on the 9th day of June, A. D. 1875, and on the motion of said Breckinridge and Kinealy it is ordered that the said petition of intervention of said intervenors herein be and the same is hereby now dismissed at the costs of said intervenors, to be taxed.

84 And afterwards, to wit, at the said last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on Friday, the 23d day of June, A. D. 1876, to wit:

Report of expert filed.

HENRY CLAMORGAN, ET AL., PETITIONERS, *ag'st* THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

HENRY T. BLOW, JR., ET AL., PETITIONERS, *ag'st* THE UNITED STATES, DEFENDANT. } No. 2673. Petition.

This day comes William H. Cozens, who was heretofore appointed as expert to estimate and report to the court the respective quantities of certain lands referred to in the order of court made herein on yesterday, and files his report as such expert in said causes. And the said report of said expert, William H. Cozens, filed as aforesaid, is in the words and figures following, to wit:

Report of expert.

Report of the expert, William H. Cozens, appointed by the honorable the judge of the district court of the United States for the eastern district of Missouri, in the matter of Henry Clamorgan et al. vs. The United States, to estimate & report upon the quantity of land

85 which would be embraced within actual surveys made in pursuance of the lines as represented upon the following maps or plans referred to in the stipulations of the parties to said suit, to wit: 1st. The new plan F, filed with the first amended petition of the complainants & described in their sworn statement G. 2nd. The plan or exhibit E (being a duplicate of said plan F), filed in the suit of Henry T. Blow et al. vs. The United States. 3rd. The plan H, filed in evidence by the United States. 4th. The plan I, filed in evidence by the United States. 5th. The plan J, filed in evidence by the United States. 6th. The plan K, filed in evidence by the United States.

I, the said expert, having retired, & having duly considered all of said plans, have agreed upon the following, & I so report:

1st. The quantity of land embraced in the new plan F, as above described, is six hundred & seventy-five thousand (675,000) acres.

2nd. The quantity of land embraced in the plan or exhibit E, as above described, is just the same, to wit, six hundred & seventy-five thousand acres.

3rd. The quantity of land embraced in said plan H cannot be estimated by me, because no back line is represented thereon, & it
86 only appears to be a basis or ground-plan on which the other plans, I, J, & K, were intended to be placed for illustration.

4th. The quantity of land embraced in said plan J, above described, I estimate to be, in the tract shaded in yellow lines, thirty-eight thousand six hundred & seventy-two acres, and the tract shaded in red lines ninety-four thousand four hundred & twenty acres.

5th. The quantity of land embraced in said plan I, above described, I estimate to be ninety-four thousand one hundred & thirty-six acres.

6th, The quantity of land embraced in said plan K, above described, I estimate to be one million eight hundred and ten thousand two hundred and forty (1,810,240) acres.

WM. H. COZENS.

I, William H. Cozens, the undersigned, do solemnly swear that the above & foregoing report contains as accurate an estimate of the quantity of land which would be embraced by actual surveys of the respective plans or maps above described as can be made in the absence of actual survey in the field.

WM. H. COZENS.

Subscribed and sworn to before me on this 23d day of June, A. D. 1876, in open court, at St. Louis, Missouri.

HENRY C. CALDWELL,
Acting Judge U. S. District Court,
Eastern District of Missouri.

87 Approval of the above report, by the court, as per stipulation, hereby waived, this 23rd day of June, 1876.

BEN. EMMONS,
Ass't U. S. Att'y.

Order to correct dates of filing.

HENRY CLAMORGAN ET AL., PETITIONERS, *ags't* THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

This day come again the petitioners, by their respective attorneys,

and, on the representation of said attorneys that certain papers and documents filed with the original petition were not marked filed as of that date, but were marked as recently filed, and on representation that other papers were marked filed with erroneous dates, it is hereby ordered that the clerk correct the same, so that they bear proper date of filing; which is accordingly done.

Decree of court.

In the United States dist. court for east. dist. of Missouri.

HENRY CLAMORGAN ET AL., PETITIONERS, *vs.* THE UNITED STATES, DEFENDANT. } No. 2225.

HENRY T. BLOW ET AL., PETITIONERS, *vs.* THE UNITED STATES, DEFENDANT. } No. 2673.

Causes consolidated.

For the reasons orally assigned in open court, this day, it is ordered, adjudged, & decreed that the concession made by Don Zenon Trudeau, the lieutenant governor of Upper Louisiana, on the 3rd day of
88 March, 1797, to Don Jacques Clamorgan, & ratified & confirmed on the 5th of April, 1797, *to* the governor general, Baron de Carondelet, is a valid & binding title against the United States.

And the parties in the above suits having by stipulation & agreement of record referred to the court six plans, or maps, representing different modes of locating said concession, to wit, the plans F & E, filed by the complainants, & the plans H, I, J & K, filed by the defendant; & the quantities of land represented by said plans having now been determined & reported to the court by a sworn expert, in pursuance of said stipulation & agreement, it is now ordered, adjudged, & decreed that the plan marked I, filed by the defendant herein, truly represents the lands conceded to Jacques Clamorgan by the concession & confirmation aforesaid.

And the said expert, having estimated & so reported to the court that said plan embraces a quantity of land equal to ninety-four thousand one hundred & thirty-six acres, which it is admitted have been disposed of by the United States, it is further ordered, adjudged & decreed, that the complainants Henry Clamorgan, Julius Clamorgan,
89 Leon A. Clamorgan, and Cyprian Clamorgan are entitled to recover from the United States certificates of location for ninety-four thousand one hundred & thirty-six acres of land, to be located upon any of the public lands of the United States subject to private entry under the sixth section of the act of Congress of June 22nd, 1860 (revived by the act of Congress of June 10, 1872), in the following proportions, that is to say, four-sixths of the whole to Henry Clamorgan; one-sixth of the whole to Cyprian Clamorgan; one-twelfth of the whole to Leon A. Clamorgan; and one-twelfth of the whole to Julius Clamorgan, which decree is rendered without prejudice to any rights which any of the said complainants may maintain as against any other of said complainants, in any suit or suits pending, or to be instituted, to settle conflicts of title patent on the record.

Judgment signed June 23rd, 1876.

HENRY C. CALDWELL,
Judge.

Memorandum.—The foregoing case was submitted on the last day but one of the term, and too late for full argument by counsel or consideration by the court. To prevent the delay incident to the court's
90 taking the case under advisement, and in order that the case might go forward to the Supreme Court for final determination, which the parties desired, the court consented to pronounce a final decree in the case, with the understanding between the court and counsel that such decree, so far as respects this court, should be regarded as having been rendered pro forma.

Appeal allowed to the defendant.

HENRY CLAMORGAN ET AL., PETITIONERS, *agst.* THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

HENRY T. BLOW, J'R, ET AL., PETITIONERS, *agst.* THE UNITED STATES, DEFENDANT. } No. 2673. Petition.

On motion of David P. Dyer, esquire, attorney of the United States in and for said district, and on representing to the court that the defendant is aggrieved by the decree herein rendered against her at the present term of this court, and desires an appeal therefrom returnable to the next term of the Supreme Court of the United States, according to law: It is ordered that the said appeal herein be, and the same is hereby, allowed as prayed for.

Service of appeal admitted, &c.

And thereupon the said defendant files an agreement in writ-
91 ing, signed by the attorneys for said petitioners, admitting service of appeal and wa'ving citation.

Appeal allowed to petitioners.

HENRY CLAMORGAN ET AL., PETITIONERS, *agst.* THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

HENRY T. BLOW, J'R, ET AL., PETITIONERS, *agst.* THE UNITED STATES, DEFENDANT. } No. 2673. Petition.

On motion of James L. Bradford and Alexander D. Anderson, esquires, attorneys for the petitioners Henry Clamorgan et al., and of Messrs. Grover and Ellis, attorneys for petitioners Henry T. Blow et al., and on representing to the court that the said petitioners are aggrieved by the decree herein rendered at the present term of this court, in so far as said decree limits the quantity of the lands sued for, as represented by the plan referred to in said decree, and desire an appeal therefrom, returnable to the next term of the Supreme Court of the United States, according to law: It is ordered that the said appeal herein be, and the same is hereby, allowed as prayed for.

Agreement filed admitting service of appeal, &c.

And thereupon the said petitioners file an agreement in writing, signed by Benjamin Emmons, esquire, assistant United States district attorney, admitting service of appeal and waiving citation, and agreeing that the petitioners be dispensed from the necessity of taking out
92 a separate transcript of appeal, and that trial on their cross-appeal be had upon the transcript of appeal to be taken out by the United States.

And afterwards, to wit, at last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on Saturday, the 16th day of September, A. D. 1876, to wit:

Appeal allowed to petitioner Cyprian Clamorgan.

HENRY CLAMORGAN ET AL., PETITIONERS,
agst.
THE UNITED STATES, &c., DEFENDANTS. } No. 2225. Petition.

HENRY T. BLOW ET AL., PETITIONERS,
agst.
THE UNITED STATES, &c., DEFENDANTS. } No. 2673. Petition.

Causes consolidated.

This day comes the United States by district attorney, and also comes Hiram J. Grover, esquire, attorney for the petitioners, Henry T. Blow et al., and also comes William R. Walker, esquire, who enters his appearance as attorney for Cyprian Clamorgan, one of the petitioners in this cause. And thereupon the said Walker, as attorney as aforesaid, files the petition of said Cyprian Clamorgan, praying that he may be allowed an appeal to the Supreme Court of the United States from the decree heretofore rendered by this court in said cause.
93 And on consideration of said petition, and being advised of and concerning the same, it is by the court ordered that the said appeal be, and the same is hereby allowed in favor of the said Cyprian Clamorgan.

Order that petit'rs give bonds for costs.

And it is further ordered that a bond for costs in the sum of two hundred and fifty dollars be filed for each of the appeals allowed the various petitioners in said cause.

And the said petition of Cyprian Clamorgan, so filed as aforesaid, is in the words and figures following, to wit:

Petition of Cyprian Clamorgan for appeal.

In the district court of the United States for the eastern district of Missouri.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, DEFENDANT.

AND

HENRY T. BLOW ET AL., PETITIOERS,
ag'st
THE UNITED STATES, DEFENDANT.

May term, 1876.

Your petitioner, Cyprian Clamorgan, one of the petitioners herein, respectfully respresents that he is aggrieved by the final decree heretofore rendered by this honorable court in the above-entitled cases as consolidated, and desires to appeal from said decree to the Supreme Court of the United States.

Wherefore petitioner prays that he be allowed an appeal from said decree to the Supreme Court of the United States.

CYPRIAN CLAMORGAN,
By WILL'M R. WALKER,
His Attorney.

94 And afterwards (in vacation) the following further proceedings took place in this case on Wednesday, the 20th day of September, A. D. 1876, to wit:

Filing of proof of heirship.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, &C., DEFENDANTS. } No. 2225. Petition.

HENRY T. BLOW ET AL., PETITIONERS,
ag'st
THE UNITED STATES, &C., DEFENDANTS. } Petition.

Causes consolidated.

This day come the said petitioners Henry T. Blow et al., by Hiram J. Grover, esquire, their attorney, and file their affidavit and proof of heirship in the above causes nunc pro tunc as of the 22d day of June last (1876), in accordance with the stipulation of counsel for petitioners and defendants filed in the said causes on the said 22d day of June last.

Affidavit of heirship.

And the said affidavit and proof of heirship, so filed as aforesaid, is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
State of Missouri, eastern district, ss:

District court of the United States in and for said State & district.

HEIRS OF JACQUES CLAMORGAN
vs.
UNITED STATES OF AMERICA.

HENRY T. BLOW, JR., ET AL.
vs.
95 UNITED STATES OF AMERICA.

Consolidated.

Socrates Newman, being duly sworn, upon his oath deposes and says: That he is one of the petitioners herein. That Louis A. T. La Beaume, to whom, on the 9th day of May, 1813, Jean Eli Tholasan sold the claim, grant, or concession herein sought to be enforced and confirmed against the United States as set out in said petition, departed this life on the day of 18 . That said Louis A. T. La Beaume was commonly known and called Louis La Beaume. That at the time of his death he left as heirs Alexandre La Beaume, Eugenia La Beaume, Louis T. La Beaume, Theodore Paul La Beaume, Susan Clarissi La Beaume, and Edmund La Beaume. That said Alexandre La Beaume is still living. That said Eugenia La Beaume is dead; that her sole living heirs are Henry T. Blow and Augustus Jacobson. That said Louis T. La Beaume is dead; that his sole living heirs are Eugenia La Beaume, Mary La Beaume, and Susan La Beaume. That said Theodore Paul La Beaume is dead; that his sole living heirs are George La Beaume, Louise La Beaume, Edmond La Beaume, William La Beaume. That said Susan Clar-
96 isse La Beaume is dead; that her sole living is affiant, Socrates Newman. That said Edmund La Beaume is dead; that his sole living heir is Adele La Beaume. That the heirs aforesaid as set out in their petition filed herein in the case of Henry T. Blow, jr., et al. vs. United States of America, are sole surviving legal heirs of said Louis A. T. La Beaume, and as such are entitled to receive and control the grant or concession aforesaid, and are the only persons so entitled to receive and control said claim, and are the sole owners and proprietors thereof.

SOC. NEWMAN.

Sworn to and subscribed before me on this 10th day of August, 1876. Qualified as notary May 13th, 1873; commission expires May 5th, 1877.

[SEAL.]

E. PARMER,
Notary Public.

Qualified as notary public, county of St. Louis, State of Missouri, May 13th, 1873. Commission expires May 5th, 1877.

And afterwards, to wit (in vacation), the following further proceedings took place in this case on Wednesday, the 18th day of October, A. D. 1876, to wit:

97 *Bond for costs by C. Clamorgan, filed & approved.*

HENRY CLAMORGAN ET AL., PETITIONERS, } No. 2225. Petition.
ag'st
THE UNITED STATES, &C., DEFENDANTS. }

This day comes Cyprian Clamorgan, one of the petitioners in this cause, by William R. Walker, esquire, his attorney, and files and presents to the court his bond for costs on appeal in the said cause in the sum of two hundred and fifty dollars, which said bond is thereupon by the court approved.

Bond for costs on appeal.

And the said bond so filed as aforesaid is in the words and figures following, to wit:

Know all men by these presents that we, Cyprian Clamorgan, as principal, and Charles Green, as surety, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars, to be paid to the said United States of America, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 11th day of October, in the year of our Lord one thousand eight hundred and seventy-six.

98 Whereas lately at the May term, 1876, of the district court of the United States for the eastern district of Missouri, in a suit depending in said court between Henry Clamorgan, Cyprian Clamorgan, Leon A. Clamorgan, and Julius Clamorgan, petitioners, and the United States of America, defendant, a decree was rendered against the said United States of America, and the said Cyprian Clamorgan, being dissatisfied with said decree, appealed therefrom to the Supreme Court of the United States:

Now, the condition of the above obligation is such, that if the said Cyprian Clamorgan shall prosecute said appeal to effect, and answer all damages and costs if he fail to make good his said appeal, then the above obligation to be void; else to remain in full force and virtue.

CYPRIAN CLAMORGAN, [SEAL.]
By WILL'M R. WALKER,
His Attorney.
CHARLES GREEN. [SEAL.]

Sealed and delivered in presence of—
W. W. CASEY.

Approved by—

SAMUEL TREAT, *Judge.*

99 And afterwards, to wit, at a regular stated term of the district court of the United States for the eastern district of Missouri, begun and holden at the city of St. Louis, in said district, on the first Monday, the 6th day of November, A. D. 1876, the following further proceedings took place in said cause on Wednesday, the 8th day of November, A. D. 1876, to wit:

Appeal bond of Henry Clamorgan, &c., filed & approved.

HENRY CLAMORGAN ET AL., PETITIONERS, } No. 2225. Petition.
ag'st
THE UNITED STATES, DEFENDANT. }

This day come the petitioners, Henry Clamorgan, Julius Clamorgan,

and Leon A. Clamorgan, by Alexander D. Anderson, esquire, their attorney, and file and present to the court their bond for costs on appeal in said cause in the sum of two hundred and fifty dollars, which bond is thereupon by the court approved. And the said bond so filed is in the words and figures following, to wit:

Bond for costs on appeal.

Know all men by these presents that we, Alex. D. Anderson, as principal, & Frank Desloge, as surety, are held and firmly bound unto the United States of America in the full and just sum of two hundred & fifty , to be paid to the said United States of America,
100 heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this third day of November, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas lately at the May term, A. D. 1876, of the district court of the United States for the eastern district of Missouri, in a suit depending in said court between Henry Clamorgan, Julius Clamorgan, & Leon A. Clamorgan, plaintiffs, and the United States of America, defendant, judgment was rendered against the said United States, and the said Henry Clamorgan et al., plaintiffs, being dissatisfied with said decree as regards the amount of said decree, having obtained a cross-appeal of the said court to reverse the judgment in the aforesaid suit:

Now, the condition of the above obligation is such, that if the said Henry Clamorgan et al., plaintiffs, shall prosecute said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

101 ALEX. D. ANDERSON. [SEAL.]
FRANK DESLOGE. [SEAL.]
[SEAL.]

Sealed and delivered in presence of—

Approved by—

SAMUEL TREAT.

102 To the honorable district court of the United States for the eastern district of Missouri:

Your petition', Hiram J. Grover, represents that he is the friend of the infants hereinafter named, and as such is prosecuting a claim in favor of the *new* heirs of Louis A. T. Labaume, deceased, and against the United States, for the ascertaining, establishment, and confirmation of their title to certain land granted and conceded to Jacques or Don Santyago Clamorgan by Don Zenon Trudeau, lieut. gov. of Upper Louisiana, on the 3d day of March, 1797, and confirmed and ratified by the governor-general, the Baron de Carondelet, on the 5th day of April, 1797; that the names of said infants who are heirs of said Louis A. T. Labaume are Mary Lebaume, Susan Lebaume, Edmund Lebaum, William Lebaum. That your petitioner, as attorney, is about to commence a suit in the name of all said heirs to establish the claim of aforesaid in said court.

Wherefore petitioner asks that Henry T. Blow, jr., who is a rela-
103 tive of said minors and a proper & suitable person, be appointed next friend of said minors, and in their behalf to prosecute said suit about to be commenced.

HIRAM J. GROVER.

104 (Indorsed:) No. 2673. U. S. district court, eastern district of Missouri. Henry L. Blow, jr., et als., heirs of Louis A. T. La Baume, vs. United States. Petition for appointment of next friend to minors. Filed 7 June, 1875. Joseph H. Clark, clerk.

105 In the United States district court for the eastern district of Missouri.

IN THE MATTER OF THE SUIT ABOUT TO BE brought by the heirs of Louis A. T. Labeaume, (dece'd)
vs.
THE UNITED STATES.

It is hereby ordered that Henry T. Blow, jr., be and he is hereby appointed on the application of Hiram J. Grover, next friend for the following-named infants, viz, Mary Labeaume, Susan Labeaume, Edmund Labeaume, and William Labeaume, for and in their interest as heirs of Louis A. T. Labeaume, against the United States, about to be commenced in this court as in said petition set out.

106 (Indorsed:) No. . U. S. district court. Henry T. Blow, jr., et als., heirs of La Beaume, vs. United States. Order appointing Henry T. Blow next friend to minors. Filed 7 June, 1875. Joseph H. Clark, clerk.

107 In the United States district court for the eastern district of Missouri.

HEIRS OF LOUIS A. T. LABEAUME
vs.
UNITED STATES.

I, Henry T. Blow, jr., do hereby consent to act as next friend in the above-entitled cause for the following-named minors, who are petitioners therein, viz, Mary Labeaume, Susan Labeaume, William Labeaume, Edmund Labeaume.

Signed this 9th day of June, 1875.

HENRY T. BLOW, JR.

Witnessed by—
HIRAM J. GROVER.

108 (Indorsed:) No. 2673. Heirs of Labeaume vs. United States. Consent of Harry T. Blow to act as next friend for infants. Filed 9 June, 1875. Joseph H. Clark, clerk.

109 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

HENRY T. BLOW, JR., SOCRATES NEWMAN, Adele La Beaume, Louis T. La Beaume, George La Beaume, Louisa La Beaume, widow of Wm. Tompkins, deceased, Edmund La Beaume (minor), William La Beaume (minor), which two minors appear by their next friend, Henry T. Blow, jr., all of St. Louis, Missouri, Eugenia La Beaume, Mary La Beaume (minor), of Ralls County, Missouri, by Henry T. Blow, jr., their next friend, Augustus Jacobson of Chicago, Illinois, Alexandre La Beaume of the city of Paris, Republic of France, who claim as heirs and representatives of Louis A. T. La Beaume, petitioners,
against
THE UNITED STATES, &C., DEFENDANT. } No. 2673.

Be it remembered that at a regular stated term of the district court of the United United States, in and for the eastern district of Missouri, begun and holden at the city of Saint Louis, in said eastern district, on the first Monday, the third day of the month of May, A. D. eighteen hundred and seventy-five, the following proceedings took place in
110 this cause on Wednesday, the 9th day of June, A. D. 1875, to wit:

HENRY T. BLOW, JR., SOCRATES NEWMAN, Adele La Beaume, Louis T. La Beaume, George La Beaume, Louisa La Beaume, widow of Wm. Tompkins, deceased, Edmund La Beaume (minor), William La Beaume (minor), which two minors appear by their next friend, Henry T. Blow, jr., all of St. Louis, Missouri, Eugenia La Beaume, Mary La Beaume (minor), of Ralls County, Missouri, by Henry T. Blow, jr., their next friend, Augustus Jacobson, of Chicago, Illinois, Alexandre La Beaume, of the city of Paris, Republic of France, who claim as heirs and representatives of Louis A. T. La Beaume, petitioners,
against
THE UNITED STATES, &C., DEFENDANT. } No. 2673. Petition.

Petition filed.

This day come the said petitioners herein, by Messrs. Grover and Ellis, their attorneys, and, with the leave of the court, file their petition in this cause against the said defendants, under the act of Congress approved 22d June, A. D. 1860, &c.

And the said petition so filed as aforesaid is in the words and figures following, to wit:

Petition.

U. S. district court, eastern district of Missouri.

HENRY T. BLOW, JR., ET ALS., HEIRS OF LOUIS A. T. La Beaume
vs.
UNITED STATES.
No. .

111 To the honorable judge of the United States district court for the eastern district of Missouri:

The petition of Henry T. Blow, jr., Socrates Newman, Adele La Beaume, Louis T. La Beaume, George La Beaume, Louise La Beaume, widow of William Tompkins, deceased, Edmund La Beaume (minor), William La Beaume (minor), which two minors appear herein by their next friend, Henry T. Blow, jr., all of whom reside in the city of St. Louis, State of Missouri; of Eugenia La Beaume, Mary La Beaume (minor), and Susan La Beaume (minor), of Ralls County, Missouri, which minors appear herein by their next friend Henry T. Blow, jr.; of Augustus Jacobson, of the city of Chicago, State of Illinois; of Alexandre La Beaume, of the city of Paris, Republic of France, who claim in their own behalf as well as in behalf of all other heirs and representatives of Louis A. T. La Beaume and other persons having an interest with petitioners in the subject matter of this suit, respectfully shows—

That heretofore Jacques or Don Santyago or James Clamorgan, deceased, to wit, on the first day of March, seventeen hundred and ninety-seven, he being then an inhabitant of the Spanish colony of
112 Louisiana, and residing in St. Louis in Upper Louisiana, presented his petition to the lieutenant governor of Upper Louisiana, Don Zenon Trudeau, praying for a concession or grant in full property of three several tracts or parcels of land in said Upper Louisiana, contiguous to each other, and situated upon the right or west bank of the Mississippi River, a few leagues above its junction with the Missouri river, and which several tracts are thus particularly described in said petition:

"The petitioner presumes to claim of your goodness, that you will be pleased to grant to him, on the western side of the river Mississippi, some leagues above the mouth of the Missouri, the tract of land bounded on one side by the little river called La Charrette, alias Dardenne, and on the other by the little river called Au Cuivre—one on the south, the other on the north (will) will serve as boundaries to those two sides.

"The petitioner wishes, moreover, that you would be pleased to grant to him sixty arpens of land in front on the banks of the Mississippi immediately adjoining the mouth of the first above named river La
113 Charette in descending the current of the Mississippi, and again sixty arpens in front also on the banks of the Mississippi adjoining immediately to the upper side of the mouth of the second above named river Au Cuivre, and ascending the current of the Mississippi. The depth of the three different above described tracts of land to be extended by two lines, starting from the banks of the Mississippi, one from the most southern and the other from the most northern point (of the front) of the above demanded tracts, which two lines shall be run parallel on each side in a westerly direction, until they reach the top of the high hills in the rear, and from there the said two lines to be continued and prolonged in the same westerly direction until they reach a point at the distance of about two hundred arpents from the foot of said

hills, and then these two extreme points shall be connected together by a straight line, which shall be so run as to form the fourth side of the said three tracts here above demanded; the said lines encompassing in their extent all the waters of the above mentioned rivers La
114 Charette, alias Dardenne, and Au Cuivre, in order that hereafter the petitioner may erect saw and grist mills thereon, also place there a number of cattle, have slaughter houses, and send salt meat to the capital."

That said several tracts of land as described and prayed for in said memorial were accordingly granted and conceded to said Jacques Clamorgan on the third day of March, 1797, by said Lieutenant Governor Don Zenon Trudeau by a decree of concession of said date in the words and figures following, to wit:

"Don Zenon Trudeau, captain in the regiment of Louisiana, lieutenant colonel by brevet, and lieutenant governor of the western part of Illinois.

"Cognizance being taken of the statement made by Don Santyago Clamorgan, and the governor general, the Baron de Carondelet, having particularly recommended to me to facilitate and protect the discovery and commerce of the Upper Missouri, in which the above named Clamorgan has engaged at my entreaties; considering the losses which said
115 enterprise has occasioned him, and the new expenses to which he shall have to contribute on account of the same undertaking, and how important it is to favor and extend the discoveries heretofore mentioned, without prejudice to the royal treasury, and to the interests and welfare of these settlements, but on the contrary in contributing to their prosperity by drawing new inhabitants.

For these considerations, and on account of the said Clamorgan having rendered himself worthy and deserving of the favors of government, the surveyor of this jurisdiction (as soon as the occupation of his place will permit) shall survey in favor of the party interested the extent of land he solicits, in the way and manner described in the foregoing document, which, together with the *f*lat and certificate of survey, and of the boundaries which shall be set (to said land), will form the title of concession which, in due time, he shall have to lay before the general government of the province, in order to get i's approbation and record.

"ZENON TRUDEAU.

"ST. LOUIS, *March 3r* ', 1797."

116 That afterwards, to wit, on the fifth of April, 1797, the said Zenon Trudeau, lieutenant-governor as aforesaid, having submitted to the governor-general, the Baron de Carondelet, the concession in favor of Clamorgan, and the motives inducing him to make the same, the said governor-general wrote to the said lieutenant-governor in reply, and confirmed and ratified the same concession in all its parts, in words and figures following, to wit:

"I have read your official note dated 11th March last, in which you state the motives which have induced you to grant to Mr. Clamorgan the tract of land situated between the two rivers Charette and Cuivre, both emptying into the Mississippi; also, sixty arpens to the north and sixty arpens to the south of said rivers, which serve to determine the situation of said land, having the Mississippi in front. Two parallel lines are to be drawn, running in the interior of the country until they reach at the distance of two hundred arpens beyond the foot of the first hills, conformably to the solicitation of the party interested; all which

I do approve, Clamorgan having deserved this favor from the government."

117 All which more fully appear by reference to certified copies and translations of said petition, concession, and decree of confirmation, filed as part of this petition, and designated as Exhibits A, B, and C, and translations A, B, & C.

And your petitioners further show that, under the laws, ordinances, & customs in force in the province of Louisiana at the dates of the foregoing concession and decree of confirmation, the lieutenant-governor and governor-general had full power and authority to make valid concessions and grants of the royal domain, without any known limit as to quantity, particularly when such grants were made in remuneration for services of meritorious persons; and that the said Don Santyago or Jacques Clamorgan became, therefore, invested with complete, perfect, and indefe'sable estate and title in and to the three tracts of land described in his petition, and referred to and described in said concession and confirmation.

That, being so invested with good title to said lands, he exercised over them the rights of ownership; and when the province of Louis-

118 iana was subsequently transferred by Spain to France by the treaty of San Ildefonso of the first of October, 1800, and again by France to the United States by the treaty of Paris of 30th April, 1803, he regarded his rights as sacred and secured by the faith of those high contracting powers.

That although the first of those treaties was secret, being a compact between royal families for mutual establishments, and therefore unknown to the inhabitants of the provi ice yet the commissioners of the King of Spain, Manuel de Salado and de Casa Calvo, sent to New Orleans to deliver the province to France, in their proclamation made in the King's name on the 18th May, 1803, declared, with respect to the inhabitants whom they were about to transfer to the new sovereign, "that they shall be maintained and protected in the peaceable possession of their property; that all the concessions or grants of any description made by the governors of these provinces shall be confirmed to the inhabitants, although they had not been confirmed by His Majesty."

That said treaty between France and the United States of the 30th April, 1803, likewise provided in its third (3) article, in respect to

119 the inhabitants, as follows: "The inhabitants of the ceded territory shall be incorporated into the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

That the said Clamorgan thus secured and protected in his rights took all proper conservatory measures required by the new sovereign, the United States, to declare the nature and extent of his title to said lands, and bring the same before the government for its recognition and ratification.

That in obedience to an act of Congress of March 2nd, 1805, being the first law requiring owners & claimants of lands in the now State of Missouri holding under titles derived from a foreign colonial source to present their titles for recognition and confirmation, the said Clamorgan presented his title and evidence thereof to the recorder and commissioners provided for by the act, who recorded the same, and re-

120 ported the claim in their report of January 20th, 1812, as one in

their opinion not entitled to confirmation by the United States. (See report in vol. 2, American State Papers, Duff Green's edition, p. 516.)

That under the act aforesaid the said commissioners had no authority to confirm the said title or claim, but only to report the same to Congress for its final action, and hence the report aforesaid is not a decision on the merits that said act had prior to said report been amended by act of March 3rd, 1807, the fourth section of which gave said commissioners power to decide on the merits, and conclusively as against the United States, claims not exceeding a league square in quantity, which amendment in no way effected their power to finally decide said claim of Clamorgan, because in *in* fact, and as shown in said commissioners' report, either of these tracts claimed far exceeded that limit.

That the said adverse opinion of said commissioners against the recognition of the title of Clamorgan has never been acted upon in any manner by Congress, and the rights of the said Clamorgan thus
121 presented and brought to the notice of the new sovereign remained in suspense and uncertainty awaiting their recognition by the United States.

That in this condition of affairs, on the 26th of May, 1824, Congress passed an act entitled "An act enabling claimants to land within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claim," which was the first act allowing owners or claimants of lands in the State of Missouri to sue the United States in their own courts for confirmation of title.

That under said act the claim of Clamorgan might have been confirmed, as many less meritorious and regular titles were, had it not been that by the 3rd proviso of the 12th section the courts were absolutely denied jurisdiction of the case by name, the only reason of the prohibition which your petitioners can conjecture being the want of information by Congress and even the Supreme Court upon the subject of Spanish colonial land-titles, and the law, ordinances, and usages of Spanish officers in Louisiana in granting lands, as is evidenced by the admissions of the Supreme Court in the case of John Smith vs. The
122 United States, reported in 9th Peters, p. 329. The case of Soulard's Heirs vs. United States (do. p. 100) had been decided adversely by the district court of Missouri in 1825, and it, with Smith's case, was held over by the Supreme Court until 1836 before finally disposed of, for the reasons above stated.

That this want of information is likewise further shown by the message of John Quincy Adams, President, of February 11th, 1829, and the letter to the Secretary of State from the honorable Joseph M. White of February 4th, 1829, transmitted to Congress with said message, which appear in White's new Recopilacion, vol. 2, pages 9–19.

That in the then Territory of Arkansas the jurisdiction of the courts under the said act 1824 was restricted to claims not exceeding a league square, and as the winter grants were known to be situated in that Territory and to cover large areas of country, and as the grants to Clamorgan, exaggerated as they were as to quantity, had been brought directly to the attention of Congress by the report of 1812 aforesaid, the general restriction in the one case as to all claims exceeding
123 a league square, and a special proviso in the other against the Clamorgan claims by name, must have proceeded from the acknowledged want of information by the courts and by Congress concerning such titles, in view of which hasty legislation was deemed dangerous.

That said act of 26th May, 1824, was often revived and re-enacted, but the original proviso refusing to the courts jurisdiction of the Clamorgan title was never repealed, modified, or effected.

That thus your petitioner, or those under whom they derive title, were debarred from taking further steps to confirm their claims, until finally Congress passed the act of 9th July, 1832, amended by act 2nd March, 1833, providing a new board of commissioners to make a final report on all claims to land in the State of Missouri, which had been filed in the office of the recorder of land titles in pursuance of law and which remained unconfirmed for any reasons whatsoever.

That in their final report of September 30th, 1835, the said board numbered the said claim of Clamorgan as 152 and declined to rec-
124 ommend it to Congress for confirmation upon the belief as declared by them that Clamorgan "had abandoned his rights or had by neglect of his privileges forfeited them." (See Report of Commissioners, Document 59, 24th Congress, first session, pages 4, 5, 6, and 401-421.)

That said action of said board was not a decision of said claim on the merits, because by the law under which they exercised jurisdiction, they were only authorized to report the claim to Congress for its final action, and not themselves to confirm it.

And your petitioners further show that by the proclamation of the President of the United States, of August 10th, 1821, issued in pursuance of the joint resolution of Congress of March 2d, 1821, the State of Missouri was admitted into the United States with limits embracing the land aforesaid now claimed by your petitioners, which said lands are situated in counties of Lincoln and St. Charles, in said State, and within the jurisdiction of this honorable court.

That on the 22nd June, 1860, Congress passed an act entitled "An act for the final adjustment of private land claims in the States of
125 Florida, Louisiana, and Missouri and for other purposes." The first section of which provides that persons claiming lands in any of the said States by virtue of grant concessions, order of survey, permission to settle, or other written evidence of title, derived from the colonial government before cession to the United States, or while such government claimed sovereignty or had the actual possession of the country embracing the lands so claimed, may present their claims for confirmation to boards of commissioners provided for by the act.

That the 11th section of said act provides in case of claims, which might, under section 1, be presented to the commissioners, and where the lands claimed have not been in possession and cultivation by the original claimants, or those holding under them, for twenty years prior to bringing suit, the persons so claiming the same may at their option, instead of filing their claims before the commissioners proceed by suit in the district court of the United States for the district in which the lands lie, by petition in the nature of a bill in equity, and require the United States to defend against the same by their district attor-
126 ney for said district.

That said act authorizes the said district court to take jurisdiction of all such claims as are in the first section particularly described, and by decree decide the same valid or unvalid according to the principles established in the act, and as equity and justice shall require.

That section six provides that in all cases of confirmation under the act, where it shall appear that the lands claimed and the title to which may be confirmed, has been sold by the United States prior to confirma-

tion, or where the surveyor-general of the district shall ascertain that the same cannot be surveyed and located, it shall be lawful for the successful claimant to make entries of public lands of the United States subject to private entry at $1.25 per acre in lieu of the lands so sold by the United States.

That said act was limited to five years from its passage, and expired on the 22nd of June, 1865, but was revived and re-enacted by the act of Mar. 2nd, 1867, for three years longer, and again expired on March 2nd, 1870.

127 That Congress again revived and amended the said act by the act of June 10th, 1872, entitled "An act to extend the provision of an act entitled 'An act for the final adjustment of private land claims in the States of Florida, Louisiana, & Missouri, and for other purposes,'" which act is still in force, and in virtue of which and the act revived by it, this honorable court is invested with jurisdiction to hear and determine this suit.

And your petitioners further show that the said land has not been in possession or cultivation by the original claimant or those holding title under him for twenty years prior the filing of this petition.

That, so far as is known to your petitioners, there never has been an actual survey made by Spain of the said tracts of land granted as aforesaid to the said Jacques Clamorgan, because, as your petitioners suppose, the accurate description of said lands in the petition, concession, and confirmation as aforesaid amounted a severance from the mass of the domain, and defined and fixed the boundaries of the same, thus constituting a descriptive grant, by metes and bounds, without

128 designation as to quantity, which character of grants has been respected by the Supreme Court of the United States in the cause of United States vs. Clark & Peters, 456, and Smith vs. United States (10 Peters, 326), and the many other decisions; that said character of grants, to wit, descriptive grants, by expression of metes and bounds, irrespective of quantity, are specially provided to be confirmed by the 11th section of said act of 22nd June, 1860, which said section includes the case of any grant otherwise unobjectionable claimed by any mode of investiture of title known to the Spanish authorities, in which there shall be a separation of the land granted from the mass of the domain by the competent authority prior to the cession, which severance may be by actual survey, or by definition of fixed, natural, and ascertainable boundaries, or by definition of initial points, with courses and distances thence.

That said act of 1860 was fully discussed by the Supreme Court in its effect upon claims within its purview in the case of United States vs. Lynd's Heirs, reported in 11th Wallace, 630, in which case the

129 court confirmed title of Lynd to 32,025 arpents of land, although the same title had been sued on under the act of 26th May, 1824 (applied to Louisiana by the act of 17th June, 1844), and an appeal to that court had been rejected on its merits, and for the reason, as stated by the court, that the act did ipso facto confirm all claims within its purview, leaving to the courts but the office of identifying the claim, detecting fraud, and announcing by decree the mode and measure of relief.

And your petitioners show further that on the 20th of October, 1813, the said Jacques Clamorgan sold & transferred all his rights to said land and to the said decrees of concession and confirmation to Jean Eli Tholosan, in which sale the said lands are stated to have an estimated extent of 448,000 arpents in superficies; but as your petitioners believe

and aver the extent of said lands of said grant is greater than said estimate, as appears from the plan and *and* sworn statement of petitioners herewith filed and marked Exhibits D & E, and that the actual extent thereof is 570,000 arpents superficies, and that on the 9th day of
130 May, 1816, the said Jean Eli Tholosan sold and transferred the same lands and all his rights under the said sale from Jacques Clamorgan to Louis A. T. La Beaume commonly called and known as Louis La Beaume, by deed duly acknowledged and recorded in the county of St. Charles on the said day of its execution.

That on the day of , 18 , the said Louis La Beaume departed this life, having by his last will and testament devised the lands aforesaid in fee to his widow, Lusson Channet Dubreuil La Beaume.

That on the day of , 18 , she, the said Lusson, died intestate, leaving as her only heirs Alex'dre La Beaume, one of plaintiffs herein, Theodore Paul La Beaume, L. T. La Beaume, C. Edmund La Beaume, Lusson Clarisse La Beaume, and Eugenia La Beaume.

That on the day of , 18 , the said Theodore Paul La Beaume died intestate, leaving as his heirs Louis T. La Beaume, George La Beaume, Louise La Beaume, widow of William Tompkins, her husband, deceased; also the following, who are now minors, appearing in this action by their next friend, Henry T. Blow, jr.: William La
131 Beaume and Edmund La Beaume, all of whom are petitioners in this action.

That on the day of , 18 , the said L. T. La Beaume died intestate, leaving as heirs your petitioners Eugenia La Beaume, Mary La Beaume, and Susan La Beaume, the *the* last two of whom appear herein by their next friend Henry T. Blow, jr.

That on the day of , 18 , the said Susson Clarisse La Beaume *named* Jonas Newman, and died on day of , 18 , and said Newman died on day of , both intestate, leaving as the only issue and lawful heir of said marriage your petitioner Socrates Newman.

That on the day of , 18 , the said Eugenia La Beaume was married to Peter E. Blow, and died on the day of , 18 , leaving as her heirs your petitioner Henry T. Blow, jr., and Alice Blow, who married Augustus Jacobson, of Chicago, and died on the day of , 1875, having by will devised all her interest herein to your petitioner herein Augustus Jacobson, and your petitioner Henry T. Blow, jr.

That the said C. Edmund La Beaume died on the day of , 18 , intestate, leaving as his sole heir your petitioner Adele La
132 Beaume. And therefore, as your petitioners allege, all the rights, interest, and estate of all said decedents in the lands aforesaid are vested in them in the following proportions, to wit: In your petitioner Henry T. Blow, one-eighth part; in your petitioner Augustus Jacobson, one *one* twenty-fourth part; in each of your petitioners Eugenia La Beaume, Mary La Beaume, Susan La Beaume, one-eighteenth part; in each of your petitioners Louis T. La Beaume, George La Beaume, Louise La Beaume, Edmund La Beaume, and William La Beaume, one-thirtieth part; to your petitioner Alexandre La Beaume, one-sixth part; in your petitioner Socrates Newman, one-sixth part; in your petitioner Adele La Beaume, one-sixth part.

That being so invested with the rights, interest, and estates aforesaid, your petitioners are, as they allege, entitled under the Constitution, treaties, and laws of the United States, the decisions of the Supreme Court of the United States, the laws and ordinances and royal decrees gover-

ing the Spanish and French province of Louisiana, the usages
133 and customs of the Spanish colonial authorities in relation to grants of lands therein, and especially under the provisions of the act of 22nd June, 1860, and the principles of equity, reason, & justice therein established as the rules of decision to a recognition and confirmation of the said grant or concession of the said three several tracts of land as a valid title against the United States.

Your petitioners herewith file and submit as a part hereof, in pursuance of section one of said act, a sworn statement by the claimants, marked Exhibit D, referring to the plan or exhibit marked E, and showing the lands supposed to be covered by their claim, according to the divisions and subdivisions of the survey by the United States.

Wherefore your petitioners respectfully pray that the United States be cited, through their district attorney for the eastern district of Missouri, to answer this petition, and that, after due proceedings had, the title of your petitioners to the three several tracts of land heretofore described conceded to Jacques or Don Santyago Clamorgan by Don Zenon Trudeau, lieutenant-governor of Upper Louisiana, and
134 confirmed and ratified by the governor-general the Baron de Carondelet, on the 5th of April, 1797, be declared a valid and binding title against the United States.

That for so much of the said lands as shall be found to remain unsold, or otherwise undisposed of, by the United States prior to confirmation, patents shall issue to your petitioners, and that for so much of said lands as shall appear to have been sold or otherwise disposed of by the United States, or which may appear by the surveyor-general of the proper district to be incapable of survey and location, your petitioners may be declared to have the right to locate in lieu thereof the like quantity of land according to the provisions of section six of said act of 22nd June, 1860, on any of the public lands of the United States subject to private entry at one dollar twenty-five cents per acre, according to the legal divisions and subdivisions.

And your petitioners pray for all costs and for all general and equitable relief, and as in duty bound will ever pray.

By their counsel:

GROVER & ELLIS.

135 Hiram J. Grover, being sworn, deposes and says that he has good reason to believe, and does believe, the facts and allegations of the foregoing petition are true.

HIRAM J. GROVER.

Subscribed & sworn to before me this 9 June, 1875.

J. H. CLARK,
U. S. Com'r, E. D. Mo.

Hiram J. Grover and Henry T. Blow, jr., being sworn, depose and say that they have good reason to believe, and do believe, the facts and allegations of the foregoing petition are true.

HIRAM J. GROVER.
HENRY T. BLOW, JR.

Subscribed and sworn to before me, the undersigned notary public within & for the county of St. Louis, State of Mo., qualified 28th Jan'y, 1875, term expires 20th Jan'y, 1879, this 9th day of June, A. D. 1875.

R. J. JACKSON, [SEAL.]
Notary Public, St. Louis Co., Mo.

I hereby waive citation and accept service of the foregoing petition. June 9th, 1875.

WM. H. BLISS,
Ass't U. S. Att'y.

Henry T. Blow, jr., being sworn, doth depose and say that he has good reason to believe, and does believe, that the facts allegations of the foregoing petition are true.

HENRY T. BLOW, JR.

Subscribed and sworn to by said Henry T. Blow, jr., before me'
136 at office in St. Louis, Missouri, this 6th day of September, A. D. 1875.

F. A. WERNER,
Comm'r U. S. Circuit Court, Eastern Dist. of Missouri.

And the said Exhibit A, referred to in said petition, is in the words and figures following, to wit:

A Monsieur Mr. Dn. Zenon Trudeau, lieutenant de gouverneur de la Haute Louisiane: Rien ne fut plus glorieux pour le supliant que l'industrie et l'emulation que vous encourageâtes en lui pour la deconverte des nations sauvages, qui s'étendent jusqu'à la mer Pacifique. Chargé de cette mission par le gouvernement général, vous daignates faire espérer au supliant l'honneur de votre protection et de votre appui, vous fites plus encore, vous sollicitates du gouverneur général les secours que réclamait le supliant pour poursuivre avec chaleur une entreprise de laquelle Sa Majesté paraissait elle-même s'occuper. En effet elle accordat au supliant un privilége exclusif de commerce pour dix années entières avec les nations du Haut Missouri, non seulement pour ouvrir une nouvelle branche dans les peleteries, mais encore pour prendre des renseignements et des connaissances sur la localité du territoire immense que l'on aurait à parcourir; toutes ces demarches, Mr., ne se sont pas faites qu'avec des grands sacrifices ches les nations sauvages pour se
concilier leur estime et leur attachement envers nous; sur vos
137 recommendations Monsr. son Excellence Mr. le Baron de Carondelet instruisit Sa Majesté des frais excessifs auxquels le supliant était contraint de subvenir dans cette épineuse entreprise pour faciliter une communication plus éloignée, alors les bontés de Sa Majesté déterminèrent en faveur du supliant qu'il lui serait compté annuellement une somme de dix mille piastres pour contribuer au suport des frais occasionés par la découverte des nations et territoires du Haut Missouri, de même que pour éloigner les etrangers de la baie d'Hudson et du Lac Supérieur, qui y transportent une portion de leur commerce pour suborner les crédules nations qui y habitent. Son excellence Mr. le Baron de Carondelet ainsi que vous, Mr., communicates de suite par des lettres officielles la générosité de Sa Majesté en faveur du supliant, mais le résultat fut sans aucun effet par les entraves que posa Mr. l'Intendant Morales, qui prétendit pour lors n'avoir dans les caisses du Roy aucuns fonds destinés à cet employ; dans cette crise de contradiction entre les deux pouvoirs le supliant demeura victime de son zèle et de son activité à se rendre utile aux désirs du gouvernement général, et aux intérêts de sa Majesté. C'est dans cette circomstance malheureuse que le supliant
ose réclamer vos bontés pour qu'il vous plaise de lui accorder sur
138 le côté occidental du Fleuve Mississippi, à quelques lieues audessus de l'entrée de la Rivière Missouri, l'espace et portion de

terre qui se trouve situé et borné d'un côté par la petite rivière nommée la Charette dite Dardenne et de l'autre côté bornée par la petite rivière nommée la rivière au Cuivre, lesquelles vuident leurs eaux l'une et l'autre dans le Fleuve Micissipi, qui servira lui-même de bornes dans la dépendance de l'Est pour un côté de la terre demandée. Les deux sus-dites rivières nommées la Charette dite Dardene et le Cuivre, l'une dans la dépendance du Sud, l'autre dans la dépendance du Nord, serviront de bornes aux deux côtés. Le suplian desire de plus qu'il vous plaise lui accorder soixante arpens de terre de front sur le bord du Mississipi, tenant à l'entrée de la première rivière nommée la Charete, mentionnée cy-dessus en descendant le courant du Micissipi et en outre soixante arpens de terre de front également sur le bord du Micissipi, tenant au-dessus de l'entrée de la seconde rivière nommée ci-dessus la Rivière au-Cuivre, en remontant le courant du Micissipi, dirigean et étendant la profondeur des trois différentes portions de terre mentionées cy-devant par deux lignes qui devront partir des bords du Micissipi, l'une dans la partie la plus sud, l'autre dans la partie la plus nord, des sus-
139 dites terres demandées que l'on prolongera paralellement sur chaque côté en avancan dans la dépendance du Oest jus qu'à ce qu'elles soient l'une et l'autre rendues sur les grandes côtés qui sont dans la profondeur a environ deux cents arpens de distances de leurs pieds par une ligne droite qui sera prolongée et s'avancera dans la même dépendance du Ouest où alors étant arrivé et parvenu ces deux points d'extrémités seront réunis par une autre ligne droite qui sera tirée pour former le quatrième côté des sus-dites trois portions de terre cy-dessus demandées; le tout en conservant dans l'enceinte des dites lignes de prolongation toutes les eaux de la sus-dite rivière nommée la Charette dite Dardene, et celle de la sus-dite rivière nommée la Rivière au Cuivre, afin qu'à l'avenir le supliant puissent y établir des moulins à scie et à farine et même d'y placer une quantité d'animaux pour y établir des vacheries et des corails pour exporter des salaisons à la capitale, et le suplian rendra graces à vos bontés.

St. Louis ce premier Mars 1797.

JE. CLAMORGAN.

OFFICE OF THE UNITED STATES RECORDER OF LAND TITLES,
St. Louis, July 18th, 1873.

This is to certify that the foregoing is a true copy or extract from pages 314 & 315 of a book marked Record Book D, which book is up to the day preserved on file in this office.

STILLMAN O. FISH,
Recorder.

140 OFFICE OF U. S. RECORDER OF LAND TITLES,
St. Louis, June 3, 1876.

I, Stillman O. Fish, recorder of land titles for the State of Missouri, hereby certify, as a supplement to my above certificate of July 18, 1873, that the above and foregoing is a true & correct copy of the request of Clamorgan for a grant of land of date March 1st, 1797, as the same is recorded in record book D, pp. 314 & 315 of the records of the old board of land commissioners appointed under the act of Congress of March 2nd, 1805, now in my custody.

STILLMAN O. FISH,
U. S. Recorder.

And the said translation of Exhibit A referred to in said petition is in the words and figures following, to wit:

To Don Zenon Trudeau, lieutenant-governor of Upper Louisiana:

Nothing has made the petitioner so proud as the encouragement and emulation you have given to his industry for the purpose of accomplishing the discovery of the Indian nations extending themselves to the Pacific Ocean. The petitioner being charged with that mission by the general government, you condescended to give him hopes that he would have the honor of your protection and support. You did more; you solicited from the general government the aid claimed by the petitioner, in order to proceed with vigor in an enterprise of which
141 his majesty himself appeared to be occupied. In fact his majesty granted to the petitioner an exclusive privilege for trading ten whole years with the nations of Upper Missouri, not only in order to open a new branch of commerce in furs, but also to get informations about, and topographical knowledge of, the immense territory which was to be explored. Those objects could not be obtained but by making great sacrifices among the Indian nations, in order to conciliate to us their esteem and friendship.

In consequence of your recommendation, sir, his excellency the Baron de Carondelet laid before his majesty an account of the excessive expenses to which the petitioner had been subjected in this arduous enterprise of facilitating communications then so extensive. His majesty, in his goodness, determined in favor of the petitioner, that a sum of five thousand dollars should be paid annually to him in order to add to the expenses occasioned by the discovery of the [illegible] contributories of Upper Missouri, as also in keeping inhabitants and territories [illegible] away foreigners who, from Hudson's Bay and Lake Superior, transported their goods, in order to bribe the credulous nations inhabiting the said Upper Missouri.

142 His excellency the Baron de Carondelet, as well as you, sir, communicated immediately, by official letters, to the petitioner the generosity of his majesty in his favor; but it had not its intended effect on account of the impediments thrown in the way by the intendant Morales, who pretended at the time to have in the king's coffers no funds appropriated to that object. In consequence of that state of contradiction between the two powers, the petitioner has remained a victim of his zeal and activity in rendering himself useful in compliance to the wishes of the general government and to the intentions of his majesty.

In these unfortunate circumstances the petitioner presumes to claim of your goodness that you will be pleased to grant to him on the western side of the river Mississip'i, some leagues above the mouth of the Missouri, the tract of land bounded on one side by the little river called Lacharette, alias Dardenne, and on the other by the little river called Au Cuivre; one on the south, the other on the north, will serve as boundaries to those two sides.

The petitioner wishes, moreover, that you would be pleased to grant to him sixty arpens of land in front of the banks of the
143 Mississip'i, immediately adjoining the mouth of the first above named river, Lacharette, in descending the current of the Mississip'i; and again sixty arpens in front, also, on the banks of the Mississip'i, adjoining immediately to the upper side of the mouth of the second above-named river, Au Cuivre, and ascending the current of the Mississip'i. The depth of the three different above-described tracts of land to be extended by two lines starting from the banks of the Mississip'i, one from the most southern and the other from the most northern point

(of the front) of the above-demanded tracts, which two lines shall be run parallel on each side, in a westwardly direction, until they reach the top of the high hills in the rear; and from there the said two lines to be continued and prolonged in the same westwardly direction until they reach a point at the distance of about two hundred arpens from the foot of said hills, and then those two extreme points shall be connected together by a straight line which shall be run so as to form the fourth side of the said three tracts here above demanded; the said lines encompassing in their extent all the waters of the above mentioned
144 rivers, Lacharette, alias Dardenne, and Au Cuivre, in order that hereafter the petitioner may erect saw and grist mills thereon, also place there a number of cattle, have slaughter-houses, and send salt meat to the capital.

And the petitioner shall render thanks to your goodness.

J. CLAMORGAN.

ST. LOUIS, *March* 1, 1797.

And the said Exhibit B, referred to in said petition, is in the words and figures following, to wit:

Dn. Zenon Trudeau, capitan del regim'to de la Luisiana, teniente coronel graduato y teniente de governador de la partida occidental de Illinois:

Visto le expuesto por Dn. Santiago Clamorgan y lo particuiar que mi
[illegible] recomendado por el Sor. Gov'or General Baron Carondelet de faci-
[illegible] proteger la descuvierta y comercio del alto Misury a que se ha
[illegible] solicitad el citado Dn. Santiago Clamorgan considerando
empeñado a ir et celle ocasiona esta empresa, los meros gastos a que deve
los astrasos que le ha ocasionat [illegible] favorecer y fomen-
contribuen en el mismo empeño y [illegible]
tar la clienvierta citado sin perjudicar Re. Hexano nya los interesos y
bien de estas estable cimientos en les bien contribuen a su pro-
145 peridad clamando nuevos pobladeres, por estas consideraciones y
las de haverse il expresado Dn. Santiago Clamorgan hecho acreedor y devienento a las gracias del govierno, el agrimensor de esta juridicion (luego que las occupaciones de su empleo se lo permitten) apeara en favor del interesado referido el espacio de tieno que solicita del mismo mode y manera que lo esplica el presente escrito, que con el proceso verbal de apes y linderos que se le fixaxa formaxa el titulo de concession que en tiempo opostumo devera presentax al govierno general de la provincia para ser aprobacion y registro.

Formar vale St. Luis de Illinois tres de marzo de mil setecientos noventa y siete.

ZENON TRUDEAU.

Recorded in book No. 3, pages twenty-one, two, three, four, five, and twenty-six, N. 14, the year one thousand eight hundred and six, January nine.

ANTOINE SOULARD,
Surveyor G'al T'y Louis'a.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St Louis, July 25th, 1873.

This is to certify that the foregoing has been truly and correctly copied or extracted from page 315 of a book marked "Record Book D," which book is up to this day preserved on file in this office.

STILLMAN O. FISH,
Recorder.

OFFICE OF U. S. RECORDER OF LAND TITLES,
St. Louis, June 3rd, 1876.

146 I, Stillman O. Fish, recorder of land titles for the State of Missouri, hereby certify, as a supplement to my above certificate of of July 25th, 1873, that the above is a true & correct copy of the concession by Zenon Trudeau to Clamorgan, of date March 3rd, 1797, as the same is recorded in Record Book D, page 315, of the records of the old board of land commissioners appointed under the act of Congress of March 2nd, 1805, now in my custody.

STILLMAN O. FISH,
U. S. Recorder.

And the said translation of Exhibit B, referred to in said petition, is in the words and figures following, to wit:

Don Zenon Trudeau, captain in the regiment of Louisiana, lieutenant colonel by brevet, and lieutenant governor of the western part of Illinois:

Cognizance being taken of the statement made by Don Santiago Clamorgan, and the governor general, the Baron de Carondelet, having particularly recommended to me to facilitate and protect the discovery and commerce of Upper Missouri, in which the above named Clamorgan has engaged at my entreaties, considering the losses which said enterprise has occasioned to him, and the new expenses to which he shall have to contribute on account of the same undertaking, and
147 how important it is to favor and extend the discoveries herebefore mentioned, without prejudice to the royal treasury, and to the interest and welfare of these settlements, but, on the contrary, in contributing to their prosperity by drawing new inhabitants:

For these considerations and on account of the said Clamorgan having rendered himself worthy and deserving of the favors of the government, the surveyor of this jurisdiction (as soon as the occupations of his place will permit) shall survey in favor of the party interested the extend of land he solicits in the way and manner described in the foregoing document, which, together with the plat and certificate of survey and of the boundaries which shall be set (to said land), will form the title of concession, which in due time he shall have to lay before the general governmment of the province, in order to get its approbation and record.

ZENON TRUDEAU.

S. LOUIS, *March* 3, 1797.

And the said Exhibit C, referred to in said petitions is in the words and figures following, to wit:

Con fha. de cinco de Avril de presente año, me dice el So'r Governador General Baron Carondelet, lo siguiente, Vt., leido el oficio de V. M. de 11 de Marzo ultimo pasado en que me espose los motivos que
148 le han movado a conceder en D'n Santiago Clamorgan la porcion de tierra que existe entre los dos rios Chorette y O Cuivre, que desaguan en el Mississipi asi que secenta arpanes en la parte mai norte y secenta arpanes al sur de dho. rios qe. se deven tomar por puestos y el Mississipy por frente, se due tiras dos lineas paralelas para covrer en lo enterior del pays hasta llegan dos cientos arpanes a dentro del pied de las primeras cuestas y tal que me dice V. M. haverlo solicitado

el interesado, todo quanto es de mi aprovacion por haver Clamorgan merecido esta gracia del govierno.

Lo que han eniro A. V. M. para su conveniento y govierno.

Dios gur. an. m. m's.

S't Luis, 3 de Julio, de 1797.

ZENON TRUDEAU,
Por D'N SANTIAGO CLAMORGAN.

Recorded (in book No. 3, pages twenty-one, No. 13,) two January, the year one thousand eight hundred and six.

ANTOINE SOULARD,
Surveyor G'al T'y Louis'a.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, July 25th, 1876.

This is to certify that the above is a true and correct copy or extract from page 315 of a book marked record book D, which book is up to this day preserved on file in this office.

STILLMAN O. FISH,
Recorder.

149 OFFICE OF U. S. RECORDER OF LAND TITLES,
St. Louis, Mo., June 3rd, 1876.

I, Stillman O. Fish, recorder of land titles for the State of Missouri, hereby certify, as a supplement to my above certificate of July 25th, 1873, that the above & foregoing is a true and correct copy of a letter from Trudeau, containing the confirmation of concession by the Baron de Carondelet, of date the 5th of April, 1797, as the same is recorded in record book D, page 315, of the records of the old board of land commissioners appointed under the act of Congress of March 2nd, 1805, now in my custody.

STILLMAN O. FISH,
Recorder.

And the said translation of Exhibit C, referred to in said petition, is in the words and figures following, to wit:

ST. LOUIS, *July* 3, 1797.

Under date of April 5th, of this current year, the governor general, Baron de Carondelet, writes to me as follows:

"I have read your official note dated 11th of last March, in which you state the motives which have induced you to grant to Mr. Clamorgan the tract of land situated between the two rivers Charette and Cuivre, both emptying into the Mississip'i; also sixty arpens to the north
150 and sixty arpens to the south of said rivers, which serve to determine the situation of said land, having the Mississip'i in front, two parallel lines are to be drawn running in the interior of the country until they reach at the distance of two hundred arpens beyond the foot of the first hills, comformably to the solicitation of the party interested. All which I do approve, Clamorgan having deserved this favor from the government."

I transmit the same to you for your knowledge and government.

May God have you in his keeping many years.

ZENON TRUDEAU.

S'or DON SANTIAGO CLAMORGAN.

151 And the said Exhibit D referred to in said petition is in the words and figures following, to wit:

District court of the United States for the eastern district of Missouri.
No. .

HENRY T. BLOW, JR., ET ALS., HEIRS OF LOUIS A. T. La Baume,
vs.
UNITED STATES.

Henry T. Blow, jr., one of petitioners in the above-entitled cause, being duly sworn, doth depose and say that the plan marked E herewith filed and together with this affidavit annexed to and made part of the petition filed in the above-entitled cause, truly represents, to the best of knowledge & belief, the three grants or tracts of land granted to *to* Don Jacques Clamorgan, on the 3rd day of March, 1797, by Don Zenon Trudeau, lieutenant-governor of Upper Louisiana, as the same appears in conflict with the township and sectional surveys of the United States.

That the central or parent grant embraces all the land between the Cuivre River on the north and the Dardenne River on the south, fronting on the Mississippi River on the east, and extending westwardly to the headwaters of said first-named rivers, and being limited in that direction by the right line (represented on said plan by *by* the let-
152 ters D & E) uniting the headwaters of said streams.

That the upper central tract or grant is intended to be represented on said plan as bounded on the south by the river Cuivre proper and the south or main branch of said river, from its mouth to its headwaters, fronting sixty lineal arpens on the Mississippi, and bounded on the north by the waving yellow line drawn from point B (intended to be on the right bank of the Mississippi, at sixty lineal arpens in a right line from and above the mouth of the river Cuivre) to the point C, parallel to the said Cuivre River and south fork of the same, and sixty lineal arpens distant all the way.

The point C is intended to be sixty lineal arpens from the fountain-head of said Cuivre River, and in a right line drawn through said source, at right angles to the general course of said stream at that point. The lower lateral grant or tract, as represented on said plan, is bounded on the north by the Dardenne River and partly by the Mississippi River, and on the south by the waving yellow line from G to F,
153 intended to be parallel to and sixty lineal arpents from said river.

The point F is intended to be sixty lineal arpents from the fountain-head of said Dardenne River, and in a right line drawn through said fountain-head, at right angles to the general course of said stream at said point.

The said point G is intended to be sixty lineal arpents from the point H, and in the right line G H, which said line is intended to be at right angles with the general course of the Mississippi at said point.

The point H is intended to be on the right bank of the Mississippi River, at the distance of sixty lineal arpents below the mouth of the Dardenne River, as represented by the letter J.

That in said plan the large squares represent the townships and the small squares the sections, as known in the United States surveying system; and that said three tracts or grants embrace the following

townships, to wit: Townships 45, 46, 47, 48, 49, of range 1 east, 46, 47, 48, & 49 of ranges 2 & 3 east, 46, 47, & 48 of range 4 east, 47 &
154 48 of range 5 east, 46, 47, 48, 49, & 50 of range 1 west, 47, 48, 49, & 50 of range 2 & 3 west, 48, 49, 50, & 51 of range 4 west, 49, 50, & 51 of range 5 west, 49, 50, 51, & 52 of range 6 west, 50 & 51 of range 7 west, and 51 of range 8 west, all being north of the bare line and east and west of the 5th principal meridian of (in) the State of Missouri.

HENRY T. BLOW, JR.

Subscribed and sworn to before me, the undersigned, notary public within & for the county of St. Louis, State of Mo., qualified 28th Jan'y, 1875, term expires 20th Jan'y, 1879, this 9th day of June, A. D. 1875.

[SEAL.] R. J. JACKSON,
Notary Public, St. Louis Co., Mo.

155 And afterwards, to wit, at a regular stated term of the district court of the United States for the eastern district of Missouri, began and holden at the city of St. Louis, in said district, on the first Monday, the first day of May, A. D. eighteen hundred and seventy-six, the following further proceedings took place in this cause, on Tuesday, the second day of May, A. D. eighteen hundred and seventy-six, to wit:

156 *Consolidation of causes.*

HENRY CLAMORGAN, CYPRIAN CLAMORGAN, Leon A. Clamorgan, and Julius Clamorgan, petitioners, *ag'st* THE UNITED STATES, DEFENDANT.	No. 2225.	Petition.
HENRY T. BLOW, JR., SOCRATES NEWMAN, Adele La Beaume, Louis T. La Beaume, George La Beaume, Louise La Beaume, Edmund La Beaume, William La Beaume, Eugenia La Beaume, Mary La Beaume, Susan La Beaume, Augustus Jacobson, Alexander La Beaume, petitioners, *ag'st* THE UNITED STATES, DEFENDANT.	No. 2673.	Petition.

This day come the petitioners herein, by J. L. Bradford, A. D. Anderson, and Hiram J. Grover, esquires, their attorneys, and also comes the United States, by district attorney, and by consent of said attorneys it is ordered that the above-entitled causes be, and the same are hereby, now consolidated for the purposes of trial.

And it is further ordered that the answer filed by the said respondent, in case (No. 2225) of Henry Clamorgan et al. against the United States, shall stand as the answer in said case (No. 2673) of
157 Henry T. Blow, jr., et al. against the United States, as far as the same is applicable, reserving the determination of the rights of the respective parties for future consideration. And the said answer so filed as aforesaid (in case No. 2225) is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA,
Eastern District of Missouri:

In the district court of the United States for the eastern district of Missouri. November term, 1875.

HENRY CLAMORGAN AND OTHERS, PETITIONERS,
vs.
THE UNITED STATES OF AMERICA, DEFENDANT.

Now comes said defendant, by David P. Dyer, esq., attorney of the United States for the eastern district of Missouri, and saving and reserving to said defendant all and all manner of benefit and advantage of exception to the manifold errors, uncertainties, misstatements and imperfections in the petition of said petitioners contained, for answer thereto or so much thereof as defendant is advised is material for defendant to answer unto, answereth and saith as follows:

Defendant denies that the said Jacques, or Don Santyago Clamorgan, dec'd, mentioned in the petition, is the ancestor of the said petitioners; denies that on the first day of March, 1797, said Clamorgan pre-
158 sented his petition to the lieutenant-governor of Upper Louisiana, praying for a grant or concession of land as stated by said petitioners; denies that the said several tracts of land alleged to have been prayed for by said Jacques or Don Santyago Clamorgan were granted and conceded to him on the 3d day of March, 1797, by Zenon Trudeau, lieutenant-governor of Upper Louisiana, as alleged in the petition of said petitioners; denies that the governor-general, the Baron of Carondelet, confirmed and ratified the alleged concession in all or any of its parts in the manner stated by the said petitioners in their said petition; denies that under the laws, ordinances and customs, in force in the province of Louisiana, at the dates of the alleged concession and decree of confirmation, the lieutenant-governor and governor-general had full power and authority to make valid concessions and grants of the royal domain, without any known limit as to quantity, as stated by said petitioners; denies that the said Don Santyago Clamorgan became invested with a complete, perfect and indefeasible estate and title, in and to the three tracts of land described in his said al-
159 leged petition, and referred to and described in said alleged concession and confirmation; denies that said Clamorgan exercised over said lands the rights of ownership, or over any part thereof.

And said defendant further answering, but not admitting that the said Jacques Clamorgan, by virtue of any of the matters and things stated in said petition or otherwise, ever had any right, title, interest or estate, in and to the lands in the said petition mentioned, or any part thereof, either in law or equity, admits that on the 20th day of October, 1813, the said Jacques Clamorgan sold and transferred all his rights to said land, and to the said decrees of concession and confirmation, to Jean Eli Tholosau by deed of that date, recorded in the recorder's office of the district of St. Charles, in which district said lands were situated, in which deed said lands are stated to have an estimated extent of 448,000 arpens, which deed was recorded as aforesaid in book C, at page 380, on the 1st day of March, 1816.

And said defendant further answering, says that the said Jean Eli Tholozau on the 9th day of May, 1816, by deed of that date, in
160 consideration of the sum of $2,000, conveyed the said lands so before conveyed to him by the said Jacques Clamorgan, to Louis La Beaume, by deed duly recorded in the recorder's office of the then district of St. Charles, on the 9th day of May, 1816, in book C, at page 475, by virtue of which said last named conveyance the heirs and legal representatives of the said *said* Louis Labeaume *Louis Labeaume* became and are entitled to whatever rights the said Jacques Clamorgan and Jean Eli Tholousau had, in and to said lands, and concession and confirmation, if ever any they or either of them had.

And said defendant further answering says, that it is true that the said Jean Eli Tholosau, on the 24th day of October, 1813, attempted to convey to Cyprian M. and Maximim Clamorgan all his rights under the said sale from Jacques Clamorgan to the said Jean Eli Tholozau, but that the said deed was and is fraudulent and void as against the said Louis Labeaume, the subsequent purchase from the said Jean Eli Tholozau for the valuable consideration of $2,000, for the reason that the said deed was not recorded in the recorder's office of the then
161 district of St. Charles, whose said lands were then lying and being, within twelve months after the execution of said deed and before the proving and recording of the deed from the said Jean Eli Tholosau to the said Louis Lebaume; said deed from said Jean Eli Tholosau to said Clamorgans was not recorded in the recorder's office of said district until the 14th day of October, 1816, at which last named date it was recorded in the recorder's office of said district in book D, page 76.

And said defendant further answering, admits that the said Cyprian M. and Maximim Clamorgan died both intestate and without issue or other law heirs, capable in law or equity of inheriting any real or personal estate, or any interest therein, and therefore deny that the said petitioners by reason of any matters or things stated in their said petition or by other reason, are entitled to the relief sought for and demanded by their said petition.

And said defendant further answering says, that it is true that there has never been an actual survey made by Spain of the said tracts
162 of land alleged to have been granted to said Jacques Clamorgan, which survey, to be made by the surveyor of the western part of Illinois, was a condition precedent to the title of concession as appears from the alleged grant by Lieut. Gov. Trudeau to said Jacques Clamorgan, which concludes as follows: "The surveyor of this jurisdiction (as soon as the occupation of his place will permit) shall survey in favor of the interested party the extent of land he solicits, in the way and manner described in the foregoing document, which together with the plat and certificate of survey and of the boundaries which shall be set to said land, will form the title of concession, which in due time he shall have to lay before the general government of the province in order to get its approbation and record."

And defendant further answering says, that there never was a separation of the said lands alleged to have been granted to the said Jacques Clamorgan as aforesaid from the mass of the public domain by any competent authority, prior to the cession to the United States of the territory in which said lands were included, but that on the contrary
163 the claim of the said Jacques Clamorgan never was recognized by such authority prior to said cession as having been so separated, for the reason that subsequent to the 3d day of March, 1797, and before said cession, repeated grants of large tracts of land were made by the

governments claiming authority, within the boundaries of the alleged grant to said Clamorgan, nor has there been any such separation since the said treaty of cession by any authority of the said United States, nor has the United States, nor any of its authorized commissioners or agents, ever recognized the alleged grant to said Jacques Clamorgan as a valid grant or claim, either in law or equity, but have constantly repudiated and ignored the same by act of Congress, by unfavorable report and rejection of the claim when presented for confirmation, and by the recognition and confirmation of a large number of junior grants and claims within the boundaries claimed by the said petitioners.

And the said defendant for answer to the first amended petition of said plaintiffs, whilst admitting that, as claimed by plaintiffs in said amended petition, it is true that the sworn statement D and the
164 plan E filed with the original petition of said plaintiffs do not properly describe the lands alleged to have been granted as aforesaid to said Jacques Clamorgan, said defendant also avers and claims that the said alleged grants are not greater in extent than by statement D and plan E are shown; that the lines and boundaries as shown by the plan F referred to in said amended petition and claimed in said amended petition to be correct, embrace an area of 600,000 acres or more, much larger in extent than was ever claimed by the said Jacques Clamorgan, and not warranted in any manner by anything contained in his alleged grant.

And for answer to the second amended petition of the said petitioners, defendant says, that defendant has no knowledge of the fact alleged therein that said Cyprian Martial Clamorgan left a last will, or that said last will was duly probated, whereby he disposed of all his property, except some specific devises, to his sister Apauline Clamorgan and to her children, Louis Henry and Louisa, or that petitioners who claim
165 under said last will, and as the heirs and legal representatives of Maximim and Cyprian Martial Clamorgan, have been made their lawful and regular heirs by virtue of the law of Missouri of the 23d March, 1863, and proceedings under the same; but deny that said alleged last will and the said act of the general assembly of the State of Missouri, and the said proceedings alleged to have been had thereunder by the St. Louis probate court, have the effect in any manner to constitute the said Henry Clamorgan, Cyprian Clamorgan, Leon Clamorgan, and Julius Clamorgan lawful heirs of the said Cyprian Martial Clamorgan and Maximim Clamorgan; deny that said proceedings are in full force and effect, or that they have any force and effect, or that the said petitioners have acquired any rights thereunder as against the said defendant.

And said defendant further answering, denies that all or nearly all of the lands claimed by the said petitioners have been surveyed and sold as public lands of the United States, but avers that a large number of private land claims have been surveyed and confirmed within the
166 lines and boundaries of said grant as claimed by the said petitioners.

And said defendant further answering generally, says that the inducement to the making of said alleged grant was as stated in the alleged petition of said Jacques Clamorgan to said Lieut. Gov. Don Zenon Trudeau, that the said petitioner might erect saw and grist mills on said rivers La Charette alias Dardenne and Cuivre, and place there a number of cattle, and have slaughter-houses and send salt meat to the capital, and that certain benefits which might arise therefrom were the considerations moving the said lieutenant governor to make said alleged grant as shown by the petition of the said petitioners, but defendant

denies that the said Jacques Clamorgan ever erected any saw or grist mills on said rivers, or placed any cattle there, or had any slaughter-houses on said rivers or lands, or sent salt meat to the capital, or in any manner carry out in good faith the terms of the said inducement.

Wherefore, and by reason of the said several premises hereinabove stated, the said defendant says that the said petitioners are not entitled to the relief prayed for in their said petition, nor to any other re-
167 lief in the premises, and having fully answered prays to be hence dismissed with judgment for costs.

DAVID P. DYER,
United States Att'y.

And afterwards, to wit, at said last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case, on Monday the 19th day of June, A. D. 1876, to wit:

Hearing of causes in part.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

HENRY T. BLOW, JR., ET AL., PETITIONERS,
ag'st
THE UNITED STATES, DEFENDANT. } No. 2673. Petition.

This day come the said petitioners, by J. L. Bradford, A. D. Anderson, and Hiram J. Grover, esquires, their attorneys, and also comes the United States, by district attorney, and the above-entitled causes, as heretofore consolidated, coming on to be heard, the same are thereupon in part heard upon the pleadings and proofs therein, and the hearing thereof not being concluded at the hour of adjour'ment, it is ordered that the further hearing thereof be continued until to-morrow morning.

168 And afterwards, to wit, at said last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on Tuesday the 20th day of June, A. D. 1876, to wit:

Further hearing of causes.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

HENRY T. BLOW, JR., ET AL., PETITIONERS,
ag'st
THE UNITED STATES, DEFENDANT. } No. 2673. Petition.

This day come again the parties by their respective attorneys, and the hearing of these causes as heretofore consolidated having been resumed, the same were further heard upon the pleadings and proofs therein, but the hearing thereof not being concluded at the hour of adjour'ment, it is ordered that the further hearing thereof be continued until to-morrow morning.

And afterwards, to wit, at said last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case, on Wednesday, the 21st day of June, A. D. 1876, to wit:

169 *Further hearing of causes.*

HENRY CLAMORGAN ET AL., PETITIONERS, *ag'st* THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

HENRY T. BLOW, JR., ET AL., PETITIONERS. *ag'st* THE UNITED STATES, DEFENDANT. } No. 2673. Petition.

This day come again the parties, by their respective attorneys, and the hearing of these causes as heretofore consolidated having been again resumed, the same were further heard upon the pleadings and proofs therein, but the hearing thereof not being concluded at the hour of adjour'ment, it is ordered that the further hearing thereof be continued until to-morrow morning.

And afterwards, to wit, at said last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on Thursday, the 22nd day of June, A. D. 1876, to wit:

HENRY CLAMORGAN ET AL., PETITIONERS, *ag'st* THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

HENRY T. BLOW, JR., ET AL., PETITIONERS, *ag'st* THE UNITED STATES, DEFENDANT. } No. 2673. Petition.

170 This day come again the parties by their respective attorneys, and the hearing of these causes as heretofore consolidated having been again resumed, the same were further heard upon the pleadings and proofs therein, and the hearing thereof having been concluded, and the arguments of counsel having been heard, the said causes were thereupon submitted to the court, and the court not being fully advised in the premises, took further time within which to consider of its judgment thereon.

Appointment of expert.

And thereupon, on motion of attorneys for said petitioners, it is ordered that William H. Cozens be, and hereby is, appointed as expert to estimate and report to the court the respective quantities of land which would be embraced within actual surveys made in pursuance of the lines as represented upon the maps and plans referred to in the stipulations filed, to wit, plans E, F, H, I, J and K.

And afterwards, to wit, at said last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further

proceedings took place in this case, on Friday, the 23d day of June, 1876, to wit:

171 *Report of expert filed.*

HENRY CLAMORGAN ET AL., PETITIONERS, *ag'st* THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

HENRY T. BLOW, JR., ET AL., PETITIONERS, *ag'st* THE UNITED STATES, DEFENDANT. } No. 2673. Petition.

This day comes William H. Cozens, who was heretofore appointed as expert to estimate and report to the court the respective quantities of certain lands referred to in the order of court made herein on yesterday, and files his report as such expert in said causes.

And the said report of the said expert, William H. Cozens, is in the words and figures following, to wit:

Report of expert.

Report of the expert, William H. Cozens, appointed by the honorable the judge of the district court of the United States for the eastern district of Missouri, in the matter of Henry Clamorgan et al. vs. The United States, to estimate & report upon the quantity of land which would be embraced within actual surveys made in pursuance of the lines as represented upon the following maps or plans referred to in the stipulations of the parties to said suit, to wit: 1st. The new plan
172 F, filed with the first amended petition of the complainants, & described in their sworn Statement G. 2d. The plan or Exhibit E, (being a duplicate of said plan F,) filed in the suit of Henry T. Blow et al. vs. The United States. 3rd. The plan H, filed in evidence by the United States. 4th. The plan I, filed in evidence by the United States. 5th. The plan J, filed in evidence by the United States. 6th. The plan K, filed in evidence by the United States.

I, the said expert, having retired & having duly considered all of said plans, have agreed upon the following & I so report:

1st. The quantity of land embraced in the new plan F, as above described, is six hundred & seventy-five thousand (675,000) acres.

2nd. The quantity of land embraced in the plan or Exhibit E, as above described, is just the same, to wit, six hundred & seventy-five thousand acres.

3rd. The quantity of land embraced in said plan H cannot be estimated by me because no back line is represented thereon & it only appears to be a basis or ground plan, on which the other plans I, J & K, were intended to be placed for illustration.

4th. The quantity of land embraced in said plan J, above
173 described, I estimate to be, in the tract shaded in yellow lines, thirty-eight thousand six hundred & seventy-two acres, and the tract shaded in red lines, ninety-four thousand four hundred & twenty acres.

5th. The quantity of land embraced in said plan I, above described, I estimate to be ninety-four thousand one hundred & thirty-six acres.

6th. The quantity of land embraced in said plan K, above described, I estimate to be one million eight hundred and ten thousand two hundred and forty (1,810,240) acres.

WM. H. COZENS.

I, William H. Cozens, the undersigned, do solemnly swear that the above & foregoing report contains as accurate an estimate of the quantity of land which would be embraced by actual surveys of the respective plans or maps above described as can be made in the abscence of actual survey in the field.

WM. H. COZENS.

Subscribed and sworn to before me on this 23d day of June, A. D. 1876, in open court, at St. Louis, Missouri.

HENRY C. CALDWELL,
Acting Judge U. S. District Court Eastern District of Missouri.

Approval of the above report by the court as per stipulation
174 hereby waived this 23rd day of June, 1876.

BEN. EMMONS,
Ass't U. S. Att'y.

Decree of court.

In the United States district court for east. dist. of Missouri.

HENRY CLAMORGAN ET AL., PETITIONERS,
vs.
THE UNITED STATES, DEFENDANT. } No. 2225.

HENRY T. BLOW ET AL., PETITIONERS,
vs.
THE UNITED STATES, DEFENDANT. } No. 2673.

Causes consolidated.

For the reasons orally assigned in open court this day, it is ordered, adjudged, & decreed that the concession made by Don Zenon Trudeau, the lieutenant-gove'nor of Upper Louisiana, on the 3rd day of March, 1797, to Don Jacqŭes Clamorgan & ratified & confirmed on the 5th of April, 1797, by the gove'nor-general, Baron de Carondelet, is a valid & binding title against the United States.

And the parties in the above suits having, by stipulation & agreement of record, referred to the court six plans or maps, representing different modes of locating said concession, to wit, the plans F & E, filed by the complainants, & the plans H, I, J, & K, filed by the defendant, & the quantities of land represented by said plans having now been determined & reported to the court by a sworn expert, in pursuance of
175 said stipulation & agreement; it is now ordered, adjudged, & decreed that the plan marked I, filed by the defendant herein, truly represents the lands conceded to Jacques Clamorgan by the concession & confirmation aforesaid.

And the said expert having estimated & so reported to the court that said plan embraces a quantity of land equal to ninety-four thousand one hundred & thirty-six acres, which it is admitted have been disposed of by the United States, it is further ordered, adjudged, & decreed that the complainants, Henry Clamorgan, Julius Clamorgan, Leon A. Clamorgan, and Cyprian Clamorgan, are entitled to recover from the United States certificates of location for ninety-four thousand one hundred & thirty-six acres of land, to be located upon any of the public lands of the United States, subject to private entry under the sixth section of

the act of Congress of June 22d, 1860, (revived by the act of Congress of June 10, 1872), in the following proportions, that is to say, four-sixths of the whole to Henry Clamorgan, one-sixth of the whole to Cyprian Clamorgan, one-twelfth of the whole to Leon A. Clamorgan, and one-twelfth of the whole to Julius Clamorgan, which decree is
176 rendered without prejudice to any rights which any of the said complainants may maintain as against any other of said complainants in any suit or suits pending or to be instituted to settle conflicts of title patent on the record.

Judgment signed June 23rd, 1876.

HENRY C. CALDWELL,
Judge.

Memorandum.

The foregoing case was submitted on the last day but one of the term and too late for full argument by counsel or consideration by the court. To prevent the delay incident to the court's taking the case under advisement and in order that the case might go forward to the Supreme Court for final determination, which the parties desired, the court consented to pronounce a final decree in the case, with the understanding between the court and counsel that such decree, so far as respects this court, should be regarded as having been rendered pro forma.

And afterwards, to wit, at said last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on Friday, the 23rd day of June, A. D. 1876, to wit:

177 *Appeal allowed to the defendant.*

HENRY CLAMORGAN ET AL., PETITIONERS, *ag'st* THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

HENRY T. BLOW, JR., ET AL., PETITIONERS, *ag'st* THE UNITED STATES, DEFENDANT. } No. 2673. Petition.

On motion of David P. Dyer, esquire, attorney of the United States in and for said district, and on representing to the court that the defendant is aggreived by the decree herein rendered against her at the present term of this court, and desires an appeal therefrom returnable to the next term of the Supreme Court of the United States according to law, it is ordered that the said appeal herein be, and the same is hereby allowed, as prayed for.

Service of appeal admitted, &c.

And thereupon the said defendant files an agreement in writing, signed by the attorneys for said petitioners, admitting service of appeal and waiving citation.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, DEFENDANT. } No. 2225. Petition.

HENRY T. BLOW, JR., ET AL., PETITIONERS,
ag'st
THE UNITED STATES, DEFENDANT. } No. 2673. Petition.

Appeal allowed to petitioners.

On motion of James L. Bradford and Alexander D. Anderson,
178 esquires, attorneys for the petitioners Henry Clamorgan et al., and of Messrs. Grover and Ellis, attorneys for petitioners Henry T. Blow et al., and on representing to the court that the said petitioners are aggrieved by the decree herein rendered at the present term of this court in so far as said decree limits the quantity of the lands sued for as represented by the plan referred to in said decree, and desire an appeal therefrom returnable to the next term of the Supreme Court of the United States according to law, it is ordered that the said appeal herein be, and the same is hereby, allowed, as prayed for.

Agreement filed admitting service of appeal, &c.

And thereupon the said petitioners file an agreement in writing, signed by Benjamin Emmons, esquire, assistant United States district attorney, admitting service of appeal and waiving citation, and agreeing that the petitioners be dispensed from the necessity of taking out a separate transcript of appeal, and that trial on their cross appeal be had upon the transcript of appeal to be taken out by the United States.

And afterwards, to wit, at last mentioned regular stated term
179 of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on Saturday, the 16th day of September, A. D. 1876, to wit:

Appeal allowed to petitioner Cyprian Clamorgan.

HENRY CLAMORGAN ET AL., PETITIONERS,
ag'st
THE UNITED STATES, &C., DEFENDANTS. } No. 2225. Petition.

HENRY T. BLOW ET AL., PETITIONERS,
ag'st
THE UNITED STATES, &C., DEFENDANTS. } No. 2673. Petition.

Causes consolidated.

This day comes the United States, by district attorney, and also comes Hiram J. Grover, esquire, attorney for the petitioners Henry T. Blow et al., and also comes William R. Walker, esquire, who enters his appearance as attorney for Cyprian Clamorgan, one of the petitioners in this cause, and thereupon the said Walker, as attorney as aforesaid, files the petition of said Cyprian Clamorgan praying that he may be allowed an appeal to the Supreme Court of the United States from the decree heretofore rendered by this court in said cause. And on consideration of said petition, and being advised of and concerning the

same, it is by the court ordered that the said appeal be, and the
180 same is hereby, allowed in favor of the said Cyprian Clamorgan.

Order that petit'rs give bonds for costs.

And it is further ordered that a bond for costs in the sum of two hundred and fifty dollars be filed for each of the appeals allowed the various petitioners in said cause.

And the said petition of Cyprian Clamorgan, so filed as aforesaid, is in the words and figures following, to wit:

Petition of Cyprian Clamorgan for appeal.

In the district court of the United States for the eastern district of Missouri.

HENRY CLAMORGAN ET AL., PETITIONERS,
agst.
THE UNITED STATES, DEFENDANT.

AND

HENRY T. BLOW ET AL., PETITIONERS,
agst.
THE UNITED STATES, DEFENDANT.

May term, 1876.

Your petitioner, Cyprian Clamorgan, one of the petitioners herein, respectfully represents that he is aggrieved by the final decree heretofore rendered by this honorable court in the above entitled cases as consolidated, and desires to appeal from said decree to the Supreme Court of the United States.

Wherefore petitioner prays that he be allowed an appeal from said decree to the Supreme Court of the United States.

CYPRIAN CLAMORGAN,
By WILL'M R. WALKER,
His Attorney.

181 And afterwards (in vacation) the following further proceedings took place in this case, on Wednesday, the 20th day of September, A. D. 1876, to wit:

Filing of proof of heirship.

HENRY CLAMORGAN ET AL., PETITIONERS,
agst.
THE UNITED STATES, &C., DEFENDANTS. } No. 2225. Petition.

HENRY T. BLOW ET AL., PETITIONERS
agst.
THE UNITED STATES, &C., DEFENDANTS. } No. 2673. Petition.

Causes consolidated.

This day come the said petitioners, Henry T. Blow et al., by Hiram

J. Grover, esquire, their attorney, and file their affidavit and proof of heirship in the above causes nunc pro tunc, as of the 22d day of June last (1876), in accordance with the stipulation of counsel for petitioners and defendants filed in the said causes on the said 22d day of June last.

Affidavit of heirship.

And the said affidavit and proof of heirship so filed as aforesaid, is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
State of Missouri, Eastern District, ss:

District court of the United States in and for said State & district.

HEIRS OF JACQUES CLAMORGAN }
vs.
UNITED STATES OF AMERICA. }

HENRY T. BLOW, JR., ET AL., }
vs.
182 UNITED STATES OF AMERICA. }

Consolidated.

Socrates Newman, being duly sworn, upon his oath deposes and says: That he is one of the petitioners herein. That Louis A. T. La Beaume, to whom on the 9th day of May, 1813, Jean Eli Tholosan sold the claim, grant or concession herein sought to be enforced and confirmed against the United States as set out in said petition, departed this life on the day of , 18 . That said Louis A. T. La Beaume was commonly known and called Louis La Beaum. That at the time of his death he left as heirs Alexander La Beaume, Eugenia La Beaume, Louis T. La Beaume, Theodore Paul La Beaume, Susan Clarisse La Beaume, and Edmund La Beaume. That said Alexandre La Beaume is still living. That said Eugenia La Beaume is dead; that her sole living heirs are Henry T. Blow and Augustus Jacobson. That said Louis T. La Beaume is dead; that his sole living heirs are Eugenia La Beaume, Mary La Beaume, and Susan La Beaume. That said Theodore Paul La Beaume is dead; that his sole living heirs are George La Beaume, Louise La Beaume, Edmund La Beaume, William La Beaume.
183 That said Susan Clarisse La Beaume is dead; that her sole living is affiant, Socrates Newman. That said Edmund La Beaume is dead; that his sole living heir is Adele La Beaume.

That the heirs aforesaid, as set out in their petition filed herein in the case of Henry T. Blow, jr., et al. vs. United States of America, are sole surviving legal heirs of said Louis A. T. La Beaume, and as such are entitled to receive and control the grant or concession aforesaid, and are the only persons so entitled to receive and control said claim and are the sole owners and proprietors thereof.

SOC. NEWMAN.

Sworn to and subscribed before me on this 10th day of August, 1876. Qualified as notary, May 13th, 1873. Commission expires May 5th, 1877.

[SEAL.]

E. PARMER,
Notary Public.

Qualified as notary public, county of St. Louis, State of Missouri, May 13th, 1873. Commission expires May 5th, 1877.

And afterwards, to wit (in vacation), the following further proceedings took place in this case on Wednesday the 18th day of October, A. D. 1876, to wit:

184 *Bond for costs by C. Clamorgan, filed & approved.*

HENRY CLAMORGAN ET AL., PETITIONERS, *ag'st* THE UNITED STATES, &C., DEFENDANTS. } No. 2225. Petition.

This day comes Cyprian Clamorgan, one of the petitioners in this cause, by William R. Walker, esquire, his attorney, and files and presents to the court his bond for costs on appeal in the said cause in the sum of two hundred and fifty dollars, which said bond is thereupon by the court approved.

And the said bond, so filed as aforesaid, is in the words and figures following, to wit:

Bond for costs on appeal.

Know all men by these presents, that we, Cyprian Clamorgan, as principal, and Charles Green, as surity, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars, to be paid to the said United States of America or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 11th day of October, in the year of our Lord one thousand eight hundred and seventy-six.

185 Whereas lately, at the May term, 1876, of the district court of the United States for the eastern district of Missouri, in a suit depending in said court between Henry Clamorgan, Cyprian Clamorgan, Leon A. Clamorgan, and Julius Clamorgan, petitioners, and the United States of America, defendant, a decree was rendered against the said United States of America; and the said Cyprian Clamorgan, being dissatisfied with said decree, appealed therefrom to the Supreme Court of the United States:

Now the condition of the above obligation is such that if the said Cyprian Clamorgan shall prosecute said appeal to effect, and answer all damages and costs if he fail to make good his said appeal, then the above obligation to be void, else to remain in full force and virtue.

CYPRIAN CLAMORGAN, [SEAL.]
By WILL'M R. WALKER,
His Attorney.
CHARLES GREEN. [SEAL.]

Sealed and delivered in presence of—
W. W. CASEY.

Approved by—

SAMUEL TREAT, *Judge.*

186 And afterwards, to wit, at a regular stated term of the district court of the United States for the eastern district of Missouri,

begun and holden at the city of St. Louis, in said district, on the first Monday, the 6th day of November, A. D. 1876, the following further proceedings took place in this case on Wednesday, the 8th day of November, A. D. 1876, to wit:

Appeal bond filed & approved.

HENRY T. BLOW ET AL., PETITIONERS, *ag'st* THE UNITED STATES, DEFENDANT. } No. 2673. Petition.

This day come the said petitioners, by Hiram J. Grover, esquire, their attorney, and file and present to the court their bond for costs, on appeal in this cause, in the sum of two hundred and fifty dollars, which said bond is thereupon by the court approved.

And the said bond so filed is in the words and figures following, to wit:

Bond for costs on appeal.

Know all men by these presents, that we, Henry T. Blow and Frank Desloge, are held and firmly bound unto the United States of America in the full and just sum of two hundred & fifty dollars, to be paid to the said United States of America, *its or* assigns; to which payment
187 well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this 10th day of November, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas lately, at the May term, 1876, of the district court of the United States for the eastern district of Missouri, in a suit depending in said court between Henry T. Blow, jr., et al., plaintiffs, and United States of America, defendant, judgment was rendered against the said United States of America, and the said Henry T. Blow et , plaintiffs, being dissatisfied with said decree, appealed therefrom to the Supreme Court of the United States:

Now the condition of the above obligation is such that if the said Henry T. Blow et al. shall prosecute appeal to effect, and answer all damages and costs if they fail to make good said plea, then the above obligation to be void, else to remain in full force and virtue.

HENRY T. BLOW, JR., ET AL., [SEAL.]
Per HIRAM J. GROVER, *Solicitor.*
HIRAM J. GROVER. [SEAL.]
FRANK DESLOGE. [SEAL.]

Sealed and delivered in presence of—

Approved by—

SAMUEL TREAT, *Judge.*

187½ *Depositions on behalf of plaintiffs.*

Deposition of Henry Gascon, of the city of New Orleans, State of Louisiana, taken before Thomas J. Cooley, a commissioner appointed by the circuit court of the United States, within and for the district of Louisiana, in the fifth circuit, on the 24th day of May, A. D. 1876.

Henry Gascon.

HENRY GASCON, sworn on behalf of plaintiffs, says:

By Mr. BRADFORD:

My age is fifty-two; my occupation is that of clerk in the surveyor-general's office of Louisiana. I had been clerk in said office since 1857, and have been chief clerk since the opening of the office after the war in 1868. I am well acquainted with the locations and surveys of the United States, having sometimes given instructions to deputies. I am acquainted with the mode of locating and surveying French and Spanish claims in Louisiana. I, as chief clerk, aid the surveyor-gen-
188 eral in drawing up and issuing instructions for the location and survey of Spanish and French claims in Louisiana; that is a part of my duty as chief clerk. I am a practical surveyor. I have read and heard read all the pleadings in the suit of the heirs of Glamorgan vs. The United States. I mean the informal copies of said pleadings in the possession of Mr. Bradford, counsel for the plaintiffs, and among them the printed petition in said suit and the concession and decree of confirmation by Carondelet.

Ques. If you were called upon to issue instructions to a deputy surveyor to survey the three grants therein described under all the circumstances of apparent conflict between natural boundaries and courses and distances, as therein set forth, how would you direct that said tracts be surveyed in order to carry out the true intent and meaning of the petition of Glamorgan, and the concession and decree of confirmation?

A. I would order it to comply as nearly as possible with the terms of the grant.

Q. Would you adhere to the call of natural boundaries, *as* would you adhere to the courses and distances given?

189 A. The courses and distances called for by the description in the petition of Glamorgan's heirs could not be adhered to without destroying a part of the grant between the two streams. I would order the surveyor to run a tract of sixty (60) arpents on the north side of the River Guivre and one of sixty (60) arpents on the south side of the Dardenne River.

Q. How would you survey the central grant? There is but one line to be run. How would you run the back line of the central grant?

A. I would take in the two rivers on each side the Guivre and Dardenne Rivers, and the Mississippi River in front.

Q. Would you run the back line to connect the head water of these streams?

A. If I had only that grant to run so as to include all the waters of the streams, of course.

Q. How would you survey the upper grant?

A. I would survey the upper grant taking sixty (60) on ascending the Mississippi River from the point A to the point B on
190 plan F, and from thence I would run a line parallel as far as it could be to the River Guivre by sixty arpents in depth, and run then in a westerly direction until I reached a point at a distance of two hundred (200) arpents from the foot of the hills, and there make a corner or stake.

Q. How would you survey the lower grant?

A. The lower grant will be surveyed in the same manner from the point I sixty arpents on descending the Mississippi River to the point

H on the plan F, and run a line sixty arpents in depth at right angles from the river, run it to the letter G, and then take parallel lines to the Dardenne River said sixty arpents in depth from said river, and so far until I reached a point at about two hundred arpents from the foot of the hills previously mentioned, and set a stake or make a corner. Then I would run a line from said stake to the stake already established on the upper grant, north of the Guivre River.

Q. Would you make that the back line of the whole three tracts?

191 A. Yes, sir; I would make it the back line of the three grants, but this mode of proceeding is in conflict with the original middle tract. This would not include all the waters of the two rivers that is called for by the first grant.

Q. Do you understand the grant of the three tracts to Glamorgan, as shown in the title papers, was intended to give him a monopoly of both streams from their mouths to their sources, and to both banks of both streams? Upon the whole, taking them as they stand, with their apparent conflictions, do you understand that they thought that there lines would embrace all the waters of the two streams?

A. So far as the lines extend, according to the description in the grant.

Q. Do you understand that they were to embrace all the waters of the two streams?

A. In the extension of the side lines, according to the description.

Q. I will ask you the question again in a different shape. Do you understand that it was believed the parallel lines run westwardly

192 from the termini of the front, and extended two hundred arpents beyond the first hills, and the westerly ends of these lines to be united by a third line; do you understand that it was thought by Glamorgan and the Spanish authorities that the country embraced within such lines would compass and include all the waters of the Guivre and Dardenne Rivers?

(Mr. Gurley objects to the conjectures of the witness as evidence.)

A. My impression is that they thought the two rivers parallel.

Q. You think it was their idea that that mode would include both valleys of both streams?

A. Yes, sir; it was their idea to give the land included between the two rivers.

Q. And they thought that this mode of defining the depth would include all the waters of the two rivers? Is that what you think they thought about it?

A. They have limited the depth of the three tracts here in the description. They have limited the depth to a line of two hundred arpents from the foot of said hill.

193 Q. About what distance is two hundred arpents?

A. Five hundred and eighty-two (582) chains, or about seven miles and a quarter.

Q. What is sixty lineal arpents?

A. One hundred and seventy-four (174) chains and fifty links, or two miles fourteen chains and fifty links; which is nearly two and a quarter miles.

Q. Have you any interest, direct or indirect, in this suit?

A. No, sir; not any.

No cross-examination.

H. GASCON.

Thomas E. Evershed.

Deposition of Thomas E. Evershed, of the city of New Orleans, State of Louisiana, taken on the 25th day of May, A. D. 1876, before Thos. J. Cooley, a commissioner appointed by the circuit court of the United States, within and for the district of Louisiana, in the fifth circuit.

194 Deposition of THOMAS E. EVERSHED, produced & sworn on behalf of complainants:

I have read & have heard read the pleadings in the case of heirs of Jacques Clamorgan vs. U. States, No. 2225, U. States district court of the eastern district of the State of Missouri. I have heard read the pleadings from informal copies in the possession of James L. Bradford, esq., and also read the same copies. I am 52 years of age, and I am conversant with the English, French, & Spanish languages. I was appointed by the first board of U. S. land commissioners for California, under the act of 1851, as one of the clerks of said board. Under the arrangement effected between the U. S. commissioners & the secretary to their board, said secretary had the choice of who should be his Spanish clerk, said Spanish clerk being considered the chief clerk of *of* said board of commissioners, and I was chosen as such chief clerk, & remained so for over a year. When Spanish clerk to the board my duties were to examine & report on the correctness of all translations of Spanish documents filed with the board, to act as interpreter in the examination of witnesses in absence of secretary, & my position
195 as such was more than sufficient to make me acquainted with all the land laws, & colonizing laws, & land regulations of Spain & of Mexico, and also with the modes of Spanish & Mexican surveys and manner of the location of the Spanish & Mexican grants.

After being clerk to the board of U. S. land commissioners for California I was appointed some time in November, 1853, by John C. Hays, U. S. surveyor-gen'l for California, as one of his clerks, and my position as clerk was that of special archive clerk. I remained such clerk until about December, 1855.

During the whole of the time I was archive clerk in the U. S. surveyor's office my duties were to examine all Spanish translations presented for the preparing of instructions to be made for the guidance of U. S. deputy surveyors for the making of the surveys of the Spanish & Mexican grants. In fact, the interpretation of all Spanish documents & explanation of the sense and meaning of all Spanish language necessary to be explained was left entirely to me as such special archive clerk.

Q. Are you familiar with the French and Spanish land grants in the State of Louisiana, and the mode of locating and surveying the same?

196 Ans. I am.

Q. What have been your opportunities for being familiar with that subject?

A. My opportunities were these, of having assisted attornies in preparing their pleadings and papers for different land suits under the act of Congress of 22 June, 1860, before the United *the United* States district courts, and also before this commissioner under said act of Congress, and also for preparing papers for the United States surveyor's office in New Orleans. My opportunities also arise from my having made it a special study from 1868 to the present time.

Q. From your examination of the petition of Clamorgan concession

and decree of conformation by Carondelet, how would you direct that the grants therein referred to be surveyed and located, having reference to the new plan marked F?

Ans. I should so prepare the instructions as to include all of the waters of the Cuivre on the north and all of the waters of the Dardenne on the south, in conformity with the calls of the concession, which concession gives to the grantee, Clamorgan, all of the waters of
197 the Cuivre River on the north, and all of the waters of the Dardenne on the south, as the two main lines established in the said concession, the Mississippi River being one line on the front, and the fourth & back line D E on said plan F.

Q. How many distinct tracts of land do you understand have been granted by those concessions?

Ans. Three distinct tracts.

Q. Please state what would be the boundaries of the middle tracts answering to your mode or theory of surveying it.

Ans. The boundaries of the middle tract would be the Cuivre on the north from its mouth to its source, and on the south the Dardenne River also from its mouth to its source, and the Mississippi to the front.

Q. What would be your back line to the centre tract?

Ans. My back line I would commence by running the line D E, as established on the map before referred to, being the headwaters of the Cuivre and Dardenne; that is, from the headwaters of the one to the headwaters of the other, so as to embody the land granted between said two rivers and also their headwaters.

198 Q. How would you direct the upper grant to be surveyed as to front and depth?

Ans. I would direct the measurement sixty arpents front on the Mississippi front point A to B on said map, said sixty arpents to run back following the meanderings of the Cuivre River until reaching letter C on said map, bringing said line to the headwaters of the River Cuivre, represented by letter D.

Q. Would you give it the same depth as the central grant has on that side?

Ans. I would.

Q. Would you run line A B a straight line, sixty lineal arpents from the mouth of the Cuivre?

Ans. I would.

Q. Would you make the upper line of the upper grant conform to the waiving yellow line drawn from B to C on the plan?

Ans. I would.

Q. How would you direct the lower grant to be surveyed?

Ans. I would run sixty lineal arpents down stream of the Mississippi River from the mouth of the Dardenne River, being letter I to letter H sixty arpents, and from letter H to letter G sixty arpents back from the Mississippi River, so as to run line from letter C to letter
199 F of said plan, so as to give the sixty arpents following the meanderings of the Dardenne River.

Q. You mean you would run the line sixty arpents back from the Mississippi River at right angle to the course of the river at that point, the line H G on the map?

Ans. I would.

Q. Would you then direct the line G F to be run parallel with the Dardenne River, sixty lineal arpents from the same, up to the headwaters of the same?

Ans. I would.

Q. What would you do with the courses & distances called for as an element in ascertaining the depth of the three tracts, referring to the calls for courses & distances as elements for ascertaining the depth of the three tracts?

Ans. I would run the back line *line* C D, D E, E F so as to embody (1) all the waters of the Cuivre on the north, and also embody the sixty arpents from the north of the Cuivre River, meandering said river, then also embodying the waters of the Dardenne River on the south, and also the sixty arpents running from the Dardenne River so as to
200 meander said river at the distance of sixty arpents from said river, and then I would close the fourth and back line by running the line—by running the same as shown on the map F, now before me, by the line D E.

Q. Suppose the plan F to truly represent the present parts and situation of the Mississippi, Cuivre, and Dardenne River, and supposing the foot-hills or first hills referred to in the concession to be generally pararl'el to the Mississippi, and about six miles from it, do you then consider that the said calls *puty* and distance could be respected in the survey of said tracts without conflicting with the calls of the natural boundaries, and without defeating the plain intent and meaning of the grant?

Ans. The calls for courses & distances in the grant conflict with the natural boundaries called for in the petition of Clamorgan, and also in the concession of Carondelet, which petition of Clamorgan asks for all the waters of the Cuivre on the north and all the waters of the Dardenne on the south, and the sixty arpents north meanderings of the
201 Cuivre, & the sixty arpents meandering of the Dardenne on the south, & which were granted him in the concession of Carondelet.

Q. Do you consider that the milling privileges of the concession were intended to embrace the control of both banks of both rivers from their source to their mouths?

Ans. I do.

Q. What was the general object of granting such monopolies of mill grants?

(This question is objected to & is waived.)

Q. Are you a professional or practical surveyor?

Ans. Neither one or the other.

Q. How much is two hundred arpents?

Ans. Five hundred & eighty one hundredths chains and eighty hundredths of a chain, equal to seven miles and twenty-seven hundredths of a mile.

Cross-examined by J. W. GURLEY, esq., assistant district attorney of the United States for the district of Louisiana:

Q. My mother tongue is English; I am familiar with the French and Spanish languages. The concession in this case was made in Spanish. I never saw the original, but have seen it in the American State
202 Papers; that was in Spanish. I read it in the American State Papers; I read it in the translation from the Spanish. I never read the original Spanish grant. My testimony is based on what I read in the American State Papers and in the petition of Clamorgan.

Q. Is there any technical language used in either of these translations?

Ans. There is not.

Q. The language is such that any man of ordinary intelligence can understand?

Ans. Such as any man of ordinary intelligence can understand.

In your opinion the map F is altogether correct?

Ans. It is.

Q. And the grant as there laid down is such as is called for by the language of those translations?

Ans. It is.

Q. Were you in the commissioner's office in California as special Spanish clerk?

A. I was.

Q. In discharging the duties of that office, were you ever called upon to do more than to give translations of Spanish documents?

Ans. I was not whilst attached to the board of commissioners or Spanish clerk.

203 Q. What was the duty you were called on to perform whilst in the archive office?

Ans. To give correct translations of the wording, of the sense and meaning of the Spanish records in said office for the purpose of satisfying all enquiries made in the office as to the sense & meaning of said Spanish records, and moreover to prepare correct translations to serve for the special instructions for the location & survey of said Spanish grants and Mexican grants.

Q. You mean by this answer that you translated as nearly as possible the language used in Spanish and Mexican grants which were needed for the purpose of making these Spanish and Mexican surveys?

Ans. Yes, sir.

Q. You were a mere translator?

I was; but nothing appertaining to the Spanish language passed out of that office except through my supervision.

Q. The services you rendered to members of the bar in these land suits has been in making translations of Spanish documents appertaining to them, were they not?

Ans. Yes, sir.

Q. Did those services extend beyond that?

Ans. No, sir.

204 Q. Have you ever surveyed a Spanish grant in Louisiana?

Ans. No, sir.

Q. Suppose the language of the concession to Clamorgan to be "a depth of the three different above described tracts of land to be extended by two lines, starting from the banks of the Mississippi; one from the most southern and the other from the most northern point (of the front) of the above demanded tracts, which two lines shall be run paral'el on either side in a westerly direction until they reach the top of the high hills in the rear, and from there the said two lines to be continued and prolonged in the same westerly direction until they reach a point at the distance of about two hundred arpents from the foot of said hills; and then these two extreme points shall be connected together by a straight line which shall be run so as to form the fourth side of the said three tracts here above demanded; the said lines encompassing in their extent all the waters of the above mentioned rivers La Charrette alias Dardenne and the Cuivre"; would you understake to say, notwithstanding the language above quoted, that the fourth side

205 or rear line of the said three tracts, or of either of them, should be bounded by a straight line connecting the headwaters of the said two streams as exhibited on the map F?

Ans. Yes, sir; I do, decidedly.

Q. Are there two paral'el lines used in designating the claim of Clamorgan on the map F?

Ans. There are not.

Q. Have you any interest, direct or contingent, in this matter?

Ans. I have not.

THOS. E. EVERSHED.

206 *Depositions on behalf of plaintiffs.*

Deposition of Stillman O. Fish, of the city of Saint Louis, taken in open court by Messrs. Walbridge, Holland and Brown, notaries public within and for the county of St. Louis, Missouri, on the hearing of the said cause, in the district court of the United States for the eastern district of Missouri, St. Louis, on the 19th day of June, A. D. 1876, on behalf of the petitioners.

Stillman O. Fish.

STILLMAN O. FISH, who being duly sworn, testified as follows:

Direct examination by Mr. BRADFORD:

Question. Are you United States recorder of land titles for the State of Missouri?

A. Yes, sir.

Q. As I call for these translations, Mr. Fish, please see if you have the corresponding original letters in Spanish. The original letter of Baron Carondelet of May 26th, 1794, in Spanish, to Clamorgan; have you it?

A. Yes, sir. (Letter produced.)

Q. Have you the original letter in Spanish from Carondelet to Clamorgan, July 22d, 1794?

A. I don't think I have it.

Q. Have you the original letter in Spanish of Carondelet to
207 Clamorgan of May 11th, 1796?

A. Yes, sir. (Letter produced.)

Q. Have you the original letter of Baron de Carondelet to Clamorgan, July 9th, 1796?

A. Yes, sir; I have it. (Letter produced.)

Q. Have you the original letter in Spanish from Baron Carondelet to Clamorgan, Sept. 18th, 1796?

A. That don't appear to be here.

Q. You have not got it?

A. No.

Q. Have you got the original letter in Spanish from Corondelet to Clamorgan dated October 26th, 1796?

A. Yes, sir. (Letter produced.)

Q. Have you the original letter in Spanish from Carondelet to Clamorgan of Nov. 5th, 1796?

A. Yes, sir.

Mr. BRADFORD. I will make this explanation: that Nos. one, three, and four, the letters of the 26th of May, 1794, 11th of May, 1796, July 9th, 1796, are in French instead of Spanish.

Q. Have you possession of the original affidavits of James McKay, 7th of March, 1817, and Charles Sanguinette, 20th of December, 1817?

Yes, sir. (Papers produced.)

The original of these are now exhibited to the court, and certified copies thereof made a part of the record.

208 Cross examination by Mr. DYER, counsel for the defendant:

Q. You say that these are the original papers in your possession; will you state how you know them to be the originals?

A. By affidavits from Mr. P. Leduc that they are the original writing of Baron De Carondelet.

Q. You have no personal knowledge?

A. No.

Counsel for plaintiffs read the following as the memorandum of evidence offered and read on the trial of this cause on behalf of the complainants:

1. Plan F, filed with the first amended petition.

2. Sworn statement G, filed with the first amended petition.

3. Part of the reports of the commissioners under the act of March 2d, 1805, against the Clamorgan claim, as contained on page 516, volume 2, American State Papers, Ewing's addition,* public lands.

4. Part of the reports of commissioners against the Clamorgan claim, dated 30th Sept., 1835, as appears on page , volume 6, American State Papers, as above; also as contained on pages 4, 5, 6, 401 to 421, of Document 59, first session 24th Congress.

209 5. Petition and accompanying documents of Price & Delaurier, presenting to Congress the claims of Clamorgan in 1818, as found in volume 3 of the American State Papers as above, pages 267 to 271.

6. Reports of committees in Congress on the winter grants, as found in the State Papers as above, volume 3, page 150, 256 to 263, 378 to 379, volume 5, page 588 to 503, showing the power of the Spanish governor-general in Louisiana to grant domain lands without any known limits.

7. Grant of 1,500,000 arpents to John Forbes & Co. (White's Recopilacion, 2nd volume, page 352 to 354.)

8. Grant of 1,200,000 arpents to Panson, Leslie & Co. (White's Recopilacion, volume 2, page 356, 357, and 358.) Both grants showing power in colonial authorities to grant the domains at will.

9. Proviso to section 10, act 3rd of March, 1811; last proviso of section 12, act of May 26th, 1824, section 3, act of July 9th, 1832, with a hostile report of 1835, all showing the disposition of lands claimed by Clamorgan.

10. Copy of proceedings in claim of Clamorgan before old board of commissioners under act of March 2d, 1805, certified to by Still-
210 man O. Fish, recorder of land titles, June 10th, 1876.

11. Certified copies of proceedings of commissioners under act of July 9th, 1832, in Clamorgan claim, certified by Stillman O. Fish, recorder of land titles, June 10th, 1876.

12. Copy of notice of claim by Clamorgan in French.

13. Translation of above into English.

14. Copy of Clamorgan petition to Zenor Trudeau, March 1st, 1797, asking a grant of land.

15. Translation of above into English.

16. Concession or grant by Zenon Trudeau to Jacques Clamorgan of the 3rd of March, 1797.

17. Translation of above into English.

18. Copy of confirmation by Carondelet of the concession to Clamorgan.

19. Translation of above confirmation into English.

* In original "Ewing's addition" stricken out in pencil, and "Green's edition" interlined.—PRINTER.

20. Copy of letter from Carondelet to Clamorgan 18th Sept., 1796.
21. Translation of above into English.
22. Copy of letter from Carondelet to Clamorgan of 8th November, 1796.
23. Translation of above into English.
24. Copy of letter from the intendant Morales to Clamorgan, dated 24th of May, 1797.
25. Translation of above into English.
211 26. Translation of letter into English from Carondelet to Clamorgan of 26th of May, 1794.
27. Translation into English of letter from Carondelet to Clamorgan 22d July, 1794.
28. Translation into English of letter from Carondelet to Clamorgan of 11th of May, 1796.
29. Translation into English of letter from Carondelet to Clamorgan 9th of July, 1796.
30. Translation into English of letter from Carondelet to Clamorgan 26th Oct., 1796.
31. Translation into English of letter from Carondelet to Clamorgan of 5th of Nov., 1796.
32. Copy of deed in French from Jacques Clamorgan to Jean Eli Tholozan of the 20th of October, 1813.
33. Translation into English of above deed.
34. Copy of deed in French from Jean Eli Tholozan to Cyprian Martial Clamorgan & Maximin Clamorgan.
35. Translation into English of above deed.
36. Copy of deed in French from Jean Eli Tholozan to Louis La Beaume 9th of May, 1816.
37. Translation of above deed into English.
38. Copy of will of Cyprian Martial Clamorgan and probate of same.
39. Copy of private act of Missouri legislature of 23rd of March, 1863, duly certified.
40. Copy of proceedings of probate court, etc., under the foregoing act.
41. Extract from the book of assessments for the year 1816 in St. Charles County, Mo.
212 42. Copies of decrees of confirmation of the Supreme Court of the United States in the following land suits:

United States, appel'ants, against Jos. Reynes.
" " " Kenner et al.
" " " Heirs of G. Leonard, deceased.
" " " Fergus Penniston et al.
" " " Caleb Cushing.
" " " Mondeville Marigny et al.
" " " Heirs of Thomas Power, deceased.
" " " Michel de Armas et al.
" " " Francois E. Trudeau & husband.
" " " Baltimore & New Orleans.
" " " Harriet Smith et al.

43. Deposition of Thos. E. Eversheed.
44. Deposition of Henry Gascon.
45. Affidavit of James L. Bradford, June 15, 1876.
46. Affidavit of Henry Clamorgan, of June 15, 1876.
47. Affidavit of Henry Clamorgan, June 15th, 1876.
48. Will of Appauline Clamorgan and probate.

49. Stipulation of plaintiffs & defendant.
50. Copy of deed from the heirs of Louis Le Beaume to the Clamorgans.
51. Certified copy of affidavits of James McKay, of 25th of December, 1817, & Chas. Sanguinette, 20th of Dec., 1817.

Mr. BRADFORD. I believe that is all.

213 (Counsel for defendant objects to all of said papers & documents above referred to as being irrelevant & incompetent. The court overruled the objection.)

Counsel for defendant offered the following in the nature of a demurrer to the evidence offered by plaintiff, Document B, under which plaintiff's claim is not such a paper as is contemplated by the 11th section of the act of June 22d, 1860:

First. It is not a complete grant; second, it is not a complete concession; third, it is not an order of survey duly executed; fourth, nor is it any other mode of investiture of the title of the land in question in the original claimant or claimants, by separation from the lands of the public domain, either by actual surveys or defined or fixed natural ascertainable boundaries, or initial points, courses, & distances, by competent authority prior to the cession to the United States of the territory in which said lands were included.

Said document B is a naked order of survey never executed & not followed by any occupancy or possession under it by said Clamorgan:

First. It contains no words of grant or concession.

214 Second. The calls are indefinite, conflicting, & uncertain, & afford no definite data by which a surveyor could make any survey of the premises without abandoning some particular direction, course, distance, boundary, or initial point in order to establish & fix upon some other.

Third. A survey, therefore, according to the data contained in the order of survey, is an impossibility, and being so, severs no land from the mass of the public domain.

Fifth. No legal evidence is produced to show that the so-called grant or concession was ever ratified or confirmed by the general government of the province.

Sixth. Document C affords no evidence of such confirmation; it is not a grant or concession, nor a confirmation of grant or concession; it is not an original paper or record, nor a copy of a record or original; it is not the act of the governor-general shown by either original act, record thereof, or copy; it is simply an extract from a letter, which Gov. Trudeau in the letter to Clamorgan says the Baron Carondelet wrote to him under date of the 5th of April, current year, 1797. It says nothing about ratifying & confirming anything in all its parts.

215 Eight. It simply proves what Gov. Trudeau did in the premises—that is, the order of survey to be made by the surveyor of the jurisdiction, which, with the plat and certificate of survey, & the boundaries which should be set to land, will form the title of concession which, in due time, petitioner shall have to lay before the general government of the province in order to obtain approbation and record.

Ninth. These conditions were never complied with, no survey made, no certificate, no boundaries set, & consequently no concession formed, & no concession to lay before the general government of the province for approbation and record.

Tenth. The claim has been twice rejected by the board of commissioners—first under the act of 1805, then under the act of 1832, & it comes in the purview of the eleventh section of the act of June 22nd, 1860.

Eleventh. The claim was presented to and rejected by Congress.

Twelfth. The order of survey vested no property rights in Clamorgan, & therefore was not covered by treaty of cession.

Thirteenth. There is no consideration for the supposed grant.

Mr. DYER. Before I ask the court to pass upon the demurrer I desire to submit evidence of competent engineers & surveyors.

216 Julius Pitzman.

JULIUS PITZMAN, being duly sworn on the part of the defendant, testified as follows:

Examined by Mr. DYER:

Q. What is your name in full?

A. Julius Pitzman.

Q. Where do you reside?

A. St. Louis.

Q. How long have you resided here?

A. Twenty-three years.

Q. What is your business?

A. I am county surveyor of St. Louis County.

Q. How long have you been such surveyor?

A. I was elected in 1863 and continued to the present by election and appointment.

Q. Has you' experience been such as to qualify you in your opinion as a competent surveyor and engineer?

A. Yes, sir; I have been surveyor for over twenty years.

Q. Have you examined that petition?

A. Yes, sir.

Q. The petition of the plaintiff in this case?

A. Yes, sir.

Q. Will you state whether the calls are so definitive and certain that a surveyor could make a survey of the premises without abandoning some particular direction, course, distance, boundary, or initial point in order to establish and fix upon some other?

A. No, sir; I do not think that can be done.

Q. Will you state to the court your reasons for that? You may
217 illustrate it by any maps you have prepared to show it.

A. Plan H has been constructed by J. Pitzman, and is referred to in the stipulation. (The plan was so marked.)

Q. Go on and state your reasons for your conclusions.

A. Plan H embraces part of the land situated in the State of Missouri, in townships 46, 47, 48, 49 north, of range 4, 3, 2, and 1 east, and range 1 west, and has been constructed from the public maps of the State of Missouri. It shows the location of the Dardenne River and the Cuivre River, including the mouth of the north and south forks. It also shows the bluff west of the Mississip'i River. The petition of the plaintiff describes it thus:

"The petitioner presumes to claim of your goodness that you will be pleased to grant to him, on the western side of the river Mississippi, some leagues above the mouth of the Missouri, the tract of land bounded on one side by the little river called La Charette, alias Dardenne, and on the other by the little river called Au Cuivre, one on the south, the other on the north, will serve as boundaries to those two sides.

"The petitioner wishes moreover that you would be pleased to
218 grant to him sixty arpens of land in front, on the banks of the Mis-

sissippi, immediately adjoining the mouth of the first above-named river, La Charette, in descending the current of the M ssissippi; and again sixty arpens in front, also on the banks of the Mississippi, adjoining immediately to the upper side of the mouth of the second above-named river, Au Cuiver, and ascending the current of the Mississippi.

"The depth of the three different above-described tracts of land to be extended by two lines starting from the banks of the Mississippi, one from the most southern and the other from the most northern point (of the front) of the above-demanded trac*k*, which two lines shall be run parallel on each side in a westerly direction until they reach the top of the high hills in the rear, and from these the said two lines to be continued and prolonged in the same westerly direction, until they reach a point at the distance of about two hundred arpens from the foot of said hills; and then those two extreme points shall be connected together by a straight line which shall be so run as to form the fourth side of the said three trac*k*s hereabove demanded. The said lines encompassing in their extend all the waters of the above-mentioned rivers La
219 Charette, alias Dardenne, and Au Cuivre, in order that hereafter the petitioner may erect saw and grist mills thereon, also place there a number of cattle, have slaughter-houses, and send salt meat to the capital."

The reason that in my opinion the lines of this land cannot be established by survey is simply this: that it calls for parallel lines which start from a point sixty arpens below the mouth of the Dardenne River, and from a point sixty arpens above the mouth of the Cuivre River, and there run in a westerly direction between parallel lines, and as the Dardenne does not run parallel to the Cuivre, it is therefore an impossibility to establish lines properly to comply with the calls of this petition. That is one of the reasons. I have prepared a sketch, marked Plan 1, and have located the most southern line of the tract by starting at a point on the bank of the Mississippi, sixty arpens below the mouth of the Dardenne, and run'ing in a southwesterly direction so as to include the entire Dardenne River, and have located the most southern corner of the tract at a distance of two hundred arpens southwestwardly from the point where said line crosses the high hills of the bluff of the Mis-
220 sissip'i River. The northwestern line of said tract of land I have located by commencing at a point on the bank of the Mississippi River sixty arpens above the mouth of the Cuiver River, and run it parallel to the southeastern line of the tract. I have located the most western corner of the said tract of land in the said line two hundred arpens southwest from the high hills or bluff of the Mississippi River, and the southwestern line of that tract of land I have located by a straight line connecting the most western with the most southern corner of said tract of land as heretofore described. This tract of land includes about 86,762 acres. The lines would not conform to the calls as given in the petition, because the northwestern line would cross the Cuivre River at a point about four miles from the bank of the Mississippi River, and leave the main portion of the Cuivre River outside of the grant, to the extent of the line, the southwest corner.

Q. This plan, I understand you, would not include the waters of the Cuivre River?

A. It would include the mouth simply, and a very small portion, only a small portion between the bluff and the Mississippi River.

Q. It would include the Dardenne to the extent of your southwestern line?

221 A. Yes, sir; it would include the Dardenne River within a line

established two hundred arpens west of the high hills of the Mississippi River.

Q. But your westwardly line would not include the waters of the Cuivre River to the extent of that line?

A. No, sir.

Q. Can two parallel lines be drawn from initial points on the Mississippi River to two hundred arpens in the rear of the hills which would include the waters of the Dardenne and Cuivre Rivers?

Mr. BRADFORD. Do you mean all the waters?

Mr. DYER. Yes, all the waters.

A. No, sir; no such line could be drawn. No line could be drawn so as to include the waters of the Dardenne and Cuivre Rivers up to a line two hundred arpens west of the bluff.

Q. When you say "include the waters" do you mean all the waters?

A. No, sir.

Mr. BRADFORD. The question is when you say it would not include the waters, do you mean all the waters?

A. Of course it would not include all the waters.

Mr. DYER. Why would it not include all the waters of the two?

A. Because of the breadth, because the breadth of the tract of land at the Mississippi River between the two extreme points is not as
222 great as the breadth between the Dardenne and Cuivre Rivers west of the bluff.

Mr. EMMONS. You mean by that, do you not, that the breadth between these two extreme points of these creeks at a distance anywhere within these black lines is greater than the distance between the two initial points?

A. Yes, sir.

Q. Therefore parallel lines would not include all the waters. That is not the only plan you could make by two parallel lines run in a southwestern direction, is it?

A. Oh, no; you may just as well shift the northern line and locate it in a manner so as to include the Cuivre River and run a line from a point sixty arpens south of the mouth of the Dardenne, run parallel to the northern line established, which would exclude from the grant the Dardenne River. In point of fact you could establish dozens of different lines which might be as correct as that one.

Q. These hills are not a uniform distance from the river?

A. No, but they are about parallel to the gen. course of the river.

Q. Suppose you were to start a line from an initial point here sixty arpens north of the Cuivre and run up the valley to where you strike the hills and then run another parallel line?

A. If it were run up the valley you would not touch the bluffs.

223 Q. Would that be a westwardly or a southwestwardly course?

A. That would vary constantly.

Q. It would; but suppose you come up here (indicating on map) and run a line up this valley, is there not a point where you would strike the hills?

A. No, sir; not if you run up the valley. It would be a gradual ascent.

Q. You would get to a point where you wouldn't have a starting place for your two hundred arpens?

A. No, sir; you would not. It is generally understood when a call is made for the bluffs of the Mississippi or Missouri it is the average of the bluffs.

Q. You would have to make an average line in order to get it if you went up the valley?

A. Yes, sir.

Q. You might make one average line?

A. Yes, sir; another surveyor might make it at a different point. I don't think they would differ materially, but there would be a difference. I have prepared another plan marked J, which is constructed on the same scale, and it shows two different theories how the line might be established. According to one theory I start at a point on the Mississippi River sixty arpens north of the mouth of the Cuivre River, and run due west until I strike the bluff, and then continue the same
224 course to a point two hundred arpens which forms the northern boundary line of the tract I think the line might be established in such a manner, because the description gives no positive course how the line shall be run, and it gives no positive corner where to run to. So I abandon the call as to the westerly direction and call it due west.

And the description also calls for about two hundred arpens, more or less, west of the bluffs. As it does not give us any natural monuments where to stop, I abandoned the call, and where it established the western corner of the tract, I abandonned that call and located the corner at two hundred arpens west of the bluffs—west of the foot of the bluffs. I have located the southern line of the tract of land by starting at a point sixty arpens below the mouth of the Dardenne River and run'ing due west until I strike the foot of the bluff, and continued the same line in a west course two hundred arpens, and the closing line I have laid down as being a straight line between the two points located as aforesaid, the Mississippi River forming the fourth side of the tract of land. The line of the tract located according to that theory is represented by the line shaded yellow upon plan J, and it would contain about 38,000 acres; it would include the Cuivre River from the
225 mouth of the Cuivre River to a line two hundred arpens west of the bluff. It may possibly exclude a very small portion, but it would only be ascertained by actual survey of the ground. I have established the lines according to another theory which is represented on the same plan J, by the line shaded red. I have established the northern line by commencing at point B, which is the corner, sixty arpens above the mouth of the Cuivre River and runs parallel to the center of the Cuivre to the foot of the bluff, then continuous along a line parallel to the center of the Cuivre River to a point two hundred arpens from the foot of the hill, measured along the meandering line. I have established the southern line of the tract of land by commencing at a point marked H, on the plat J, which is the corner, sixty arpens below the mouth of the Dardenne River and by running a line from said point parallel to the center of the Dardenne River until it strikes the average line. The line is drawn from the foot of the hills north of the Dardenne River to the foot of the hill south of the Dardenne River, and continue said line in a southwesterly direction parallel to the center of the Dardenne
226 River two hundred arpens and to the most southwestern corner of the tract of land to be located. From said last mentioned point I located a straight line to the most northwestern corner of the tract of land as heretofore located. This tract of land would include about 80,000 acres of land.

Mr. EMMONS. That is upon a different theory, is it not?

A. Yes, sir.

Q. You abandoned the parallel lines?

A. Yes, sir.

Q. The other lines started from two initial points and run parallel with each other?

A. Yes, sir; I take it for granted that it possibly meant that the north line should be run parallel to the Cuivre River, and the south line run parallel to the Dardenne River, upon that theory.

Q. What part of the calls in this petition would that seem to satisfy?

A. (Witness reads.) "One from the most southern and the other from the most northern point (of the front) of the above demanded tract, which two lines shall be run parallel on each side, in a westwardly direction, until they reach the top of the high hills in the rear, and from there the said two lines to be continued and prolonged in the same westerly direction, until they reach a point at the distance of about two hundred arpens from the foot of said hills"; it satisfies the
227 description thus far. Which two lines shall be run parallel in a westwardly direction; that might indicate the lines should be at least run parallel with the river, but afterwards the description provides, "the said two lines to be continued and prolonged in the same westerly direction until they reach a point at the distance of about two hundred arpens from the foot of said hills;" it doesn't conform to that part of the description, because a line which is parallel to the river cannot be continued in a westerly direction.

Q. (By Mr. GROVER.) It does not conform either to the further description that it shall encompass the waters of both rivers?

A. This would encompass the waters of the river as far as the line ran, not all.

Q. (By Mr. EMMONS.) Will it not encompass the waters of both rivers to the extent of the line?

A. Yes, it does include all the waters to the extent of the line; putting the most liberal construction on it, I think that this represents the idea which the parties had at the time; I am rather inclined to think that this line shaded red on plan J represents the tract of land which is intended to be included within the line described on page 4 & 5; I think it includes the tract of land described in the petition It
228 includes all the land between the Dardenne and the Cuivre Rivers to a line 200 arpens west of the bluffs, and it gives them a strip of land 60 arpens north of the Cuivre River, also to a point about 200 arpens west of the bluff; it gives them 60 arpens south of the Cuivre, also 200 arpens west of the bluff.

Q. You mean by that in front?

A. Yes, sir.

Q. But not in width?

A. Not in width, the breadth being measured at the Mississippi.

Q. In measuring that you abandoned the parallel line running from the river; from the two initial points?

A. Yes, sir; I abandoned that entirely, taking it for granted that they meant that the northern line should be parallel to the Cuivre or the southern line parallel to the Dardenne.

Q. The theory upon which this last plan is made, the red line plan, is at variance with the theory upon which the other plans were made?

A. Yes; it differs entirely in shape & quantity. Plan K is constructed on a small scale taken from the State maps of Missouri. It represents an entirely different theory, & the lines are located by starting at a point on the Mississippi River 60 arpens north of the mouth of the Cuivre River & by running thence northwestwardly
229 along a line so located that it includes all the headwaters of the Cuivre River, & is 60 arpens therefrom. The other line is so

located as to start from a point on the Mississippi River 60 arpens below the mouth of the Dardenne, & following a line so as to include all the waters of the Dardenne & being 60 arpens therefrom. A line so established would include the greater part of St. Charles County, Lincoln County, a large part of Pike County & Audrain, and about one-half of Montgomery County, and would contain about one million and a quarter acres. This plan is drawn only to illustrate the call in the petition which says it shall include the waters of Cuivre River and Dardenne.

Q. (By Mr. DYER.) If it is the waters of the Cuivre River & Dardenne that map correctly represents the grant?

A. Yes, sir; if you include some you have to include them all. On the same plan I have laid down the lines of the tract of land shaded red upon plan J.

Q. In this you abandonned the parallels?

A. Yes, sir.

Q. The two parallel lines running in a westerly direction?

A. Yes, sir.

Q. You abandoned also the call of the hills in the rear?

A. Yes.

230 Q. You abandoned the straight line connecting the two points; that is the outer line—the real line?

A. Yes; because it cannot be a straight line; it is an impossibility.

Q. That plan then is different from all the other theories?

A. From all the others; totally different.

Q. Which do you say would be the correct theory?

A. I think the line shaded red upon plan J represents the land which is probably intended to be included in the petition.

Q. Could you locate a line from the petition in that way?

A. No; you could not locate the boundaries definitely; it would vary in many of the calls, but putting the most liberal construction on it of what might be the intent of the partie, from the petition I think that probably might be the line. You can apply 100 different theories to establish the line of this tract of land; no two persons would agree except by consultation as to what it meant—what land it meant to include?

Cross-examined by Mr. J. L. BRADFORD, counsel for complainants:

Q. Mr. Pitzman, in constructing plan H, you have represented by etching a line of hills?

A. Yes.

231 Q. What are your reasons for supposing that those are the hills referred to in the muniments of title?

A. The hills are located according to the map of several counties, which is public, and which, as far as I have examined it, corresponds with the public surveys.

Q. Are you personally aware of the fact that those hills are truly represented? Do you know it as a personal fact? Can you swear that the hills are truly represented on that plan?

A. No, sir; I can't. I stated before, I have copied them from the public map of St. Charles County, which is here in court, I think.

Q. For all you know to the contrary, might there not be other lines of hills farther in the interior than the line of hills represented by the etching on plan H?

A. No, sir: I don't think there is. I have a general idea of the topography.

Q. From what you know; not what you think?

A. No, sir; I have no personal knowledge of it.

Q. You have no personal knowledge of the location of the hills?

A. Not of the accurate location; of the general location I have. I have been through the country on several occasions; not the accurate location; it might be a couple of miles out of the way,
232 but the general course, the general distance back from the Mississippi, is correctly laid down approximately.

Q. You are a practical surveyor?

A. Yes, sir.

Q. Are you accustomed to surveying, locating Spanish grants?

A. I have made some surveys for the United States Government.

Q. Re-surveys, you mean?

A. Yes, sir; re-surveys of Spanish tracts. I am generally familiar with them. I am familiar with the location of them.

Q. You have never made an original survey of a Spanish title?

A. No, sir; but I have examined all the papers in a great many of the Spanish claims & relocated corners. Examined all the papers containing calls.

Q. What cases?

A. A great many of the Spanish grants here in St. Louis.

Q. What is the variation of the needle here?

A. The variation of the needle changes from day to day, sir.

Q. What was it yesterday?

A. You can't tell; it changes continually.

Q. What is it to-day?

A. You can't tell; the needle varies sometimes fifteen minutes during the day.

Q. What do you understand that the term "westwardly," as
233 employed in the muniments of title, means?

A. It is a very definite course, if corners are given; if the starting point is correctly laid down & the corner to run to.

Q. That is supposing a case that don't exist. With reference to this term used in the title papers, what course do you assume westwardly to mean?

A. It is a very indefinite call.

Q. Would south 46° west be westwardly?

A. Yes, sir, it would be westwardly; in point of fact, south degree 10 degrees might be considered a westwardly course; everything west of *of* a north and south line is westwardly.

Q. North 20 degrees west would be westwardly?

A. Yes, as a general thing we consider anything above north 45 west, or above south 45 west, is a westwardly course. In point of fact, anything between that is westwardly course.

Q. Would north ten degrees west be westwardly?

A. Certainly it would.

Q. Would south seven degrees west be westwardly?

A. As I stated before, anything west of a north or south line would be a westwardly course; as a general thing it is not used. Everything between south 45 & west, or anything between north 45 and west, we generally consider a westwardly course; but in a good many
234 Spanish calls they have called westwardly courses, courses which are in point of fact south of southwest or north of northwest.

Q. What is a lineal arpent in chains and links?

A. Two chains $91\frac{2}{3}$ links, or 192 feet 6 inches.

Q. What is the ratio of a superficial arpent to a supercial acre?

A. $85\frac{7}{100}$ acres is 100 arpents.

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Q. With reference to the plan H, referred to in your examination-in-chief, you represent the location according to three theories, do you not?

A. Yes, sir; I do.

Q. Those theories being represented by the red line on Plan J?

A. Yes, sir.

Q. And the red line & yellow line on Plan J?

A. Yes; which are constructed on the same scale as Plan H.

Q. Now, with reference to the memory represented by Plan I, you have stated that the lateral side lines will run from the upper and lower termini of the front about southwest.

A. Yes.

Q. And you would limit the tract of land embraced between such side lines by a straight line uniting their termini in the anterior?

A. Yes, sir.

Q. Would you draw a line from H on said plan, I being the lower terminus of the front, as close as might be to the Dardenne
235 River, without crossing said river? Your object was to run as near as you could without crossing?

A. Yes, sir. The line has been drawn from the most southeastern corner of the land, so as to include the entire Dardenne River, to a point 200 arpents west of the bluff.

Q. You run the line from B, the upper terminus of the front, parallel to such lower side line?

A. Yes, sir.

Q. Would said lower side line run from H, the lower terminus of the front, give a tract of land 60 arpents in width along the Dardenne River?

A. No, sir; it would not.

Q. Would not that tract of land included between said line and the Dardenne be of varying width, from a few arpents to 6 and 8 miles in width?

A. It would vary from 1 arpent to 5 miles in width, perhaps.

Q. Would such upper side line, drawn from point B, the upper terminus of the front, embrace a tract 60 arpents in width along any part of the Cuivre River?

A. No, sir; it would not in width. It would simply measure 60 arpents, measured along the bank of the Mississippi River.

Q. Would not the tract of land embraced between such upper side line and the Cuivre River, lying north of the Cuivre, be a very
236 small triangular-shaped tract?

A. Yes, sir.

Q. Would it be such a tract as you, in surveyors' parlance, would call a tract 60 arpents front on the Mississippi, lying above and bounded south by the Cuivre River?

A. No, sir; that is not the language of the petition.

Q. With reference to plan J and the tract of land therein described in yellow lines, those side lines so designated in yellow are designed to run due west from the termini of the front, are they not?

A. Yes, sir.

Q. Would said tract of land embrace any land lying upon the Dardenne River at all?

A. No, sir.

Q. How far would the nearest part of such tract of land embraced in said yellow lines be from the nearest part of the Dardenne, about?

A. About 4 miles.

Q. Would the upper one of said yellow lines drawn west from the upper terminus of the front embrace a tract of land 60 arpents in width north of the Cuivre River, bounded southwardly by said Cuivre River, and fronting 60 arpents on the Mississippi?

A. Yes, I think it might possibly. It has a front of 60 arpents on the Mississippi River, and extends westwardly to a line 200 arpents west of the bluff.

237 Q. It would be of irregular width?

A. Yes.

Q. You don't apprehend my question. Would not the tract lying between said upper side line and the Cuivre River be of varying width, in some places twice as much as 60 arpents and in some places less than 60 arpents?

A. It would be a trifle less at some places than 60 arpents, but in a good many places it would be more than twice as wide.

Q. The lower yellow line is intended to run west from the lower termini of the front?

A. Yes.

Q. Would not such line run up the middle of the Mississippi River for the first 5 or 6 miles?

A. Yes, sir; it would run through the Mississippi River for about 7 or 8 miles before it strikes the western bank of the Mississippi again.

Q. Would it not strike the western bank of the river about the middle of the central tract?

A. Yes, sir; just about the middle of the central tract of land as first described as being between the Dardenne and Cuivre.

Q. From there to its western terminus it would run through the middle of the central tract?

A. No; it runs near the Cuivre River.

Q. And in one place it crosses the Cuivre?

238 A. It may possibly cross it or come very near to it, the scale being so small.

Q. That is your supposition?

A. Yes, sir.

Q. The rear line in yellow upon said plan J is intended to be drawn so as to unite the points on the upper and lower lateral lines, which points are supposed to be 200 lineal arpents west from the foot of the hills?

A. Yes, sir.

Q. Can you say that said tract of land bounded by said yellow lines would encompass all the waters of the said Cuivre and Dardenne Rivers?

A. No, sir; I don't say it would. It would abandon that part of the description; entirely violate it.

Q. Would such tract encompass any portion of the waters of the Dardenne River?

A. No, sir.

Q. Would said land be bounded in any part on the south by the said Dardenne River?

A. No, sir; it would not.

Q. Would said land be bounded on the east by that portion of the Mississippi extending from 60 arpents above the Cuivre to 60 arpents below the Dardenne?

A. No, sir; it would not.

Q. What portion of said front embraced within 60 arpents north of

the Cuivre and 60 arpents south of the Dardenne would be occupied by said tract?

A. About one-half of it.

At this point an adjournment was had until 10 a. m. to-morrow.

239 ST. LOUIS, *June 20th*, 1876.

WM. H. COZZENS, being duly sworn on the part of the defendant, testified as follows:

Examined by Mr. EMMONS:

Q. State your name, residence, profession.

A. My name is Wm. H. Cozzens. I reside in the city of St. Louis & have resided here all my life. My profession is that of land surveyor & civil engineer. I have been engaged at that business in this city for forty years—in this city & county & throughout the State of Missouri.

Q. Have you ever surveyed any Spanish grants?

A. I have been mostly engaged in that business all my life. I was United States deputy surveyor for Illinois & Missouri for many years, & do a great deal of surveying now in the State of Missouri.

Q. Please examine that (handing pamphlet to witness).

A. I will state I have examined this very thoroughly. I have read it over repeatedly, & have consulted the maps of the State of Missouri, county of St. Charles, & Warren, Lincoln, & Pike Counties, in connection with this location.

Q. Please state whether you can locate that description according to its calls; whether you can locate a survey; make a definite
240 location of it.

A. I will state in my opinion the calls are very ambiguous or uncertain. There are some of them that can readily be found, but in its entirety it is somewhat ambiguous.

Q. Can you locate a survey according to that, & follow all the calls?

A. No, sir.

Q. Is that possible?

A. In connection with these maps that were presented here by Mr. Pitzman, with whom I had some hand in suggesting about them, I will state that I have thoroughly studied this description, & that in its entirety I could not make a location definitely to my satisfaction, taking all its calls. The two streams I can find, I know them & have been on them, that is the Dardenne & Cuivre or Copper. I know the location of the bluffs, but when it comes to say "the said lines encompassing in their extent all the waters of the above-mentioned rivers, the Dardenne & Cuivre," that would embrace much more area than to confine myself to the streams themselves proper, taking large portion of about four counties.

Plat market plan I is presented to the witness.

Q. Please state in what manner this plan conforms to the calls of this order of survey & wherein it differs.

A. This plat I is so constructed as to make the southeastward
241 boundary of a claim starting from the point on the Mississippi River at H in said diagram of sixty arpents down stream from the mouth of the Dardenne River, running in a southwestwardly direction from said point & tangent to the two most southern projections or elbows of the said Dardenne River, & extending in southwestwardly direction the distance of two hundred arpents, which in our measure is about seven & a quarter miles, from the foot of the bluffs to the southwest cor-

ner. The northwestwardly boundary starts from the point on the Mississippi River at letter B in said plat, & sixty arpents distant up stream from the mouth of the Cuivre River, & runs in a southwestwardly direction & parallel to the first mentioned line, to the northwest corner of the claim, two hundred arpents westward of the foot of the bluffs. The fourth or exterior rear line is made a straight line connecting the said points, northwest and southwest corners. Within those lines would be an area of between 86 & 87,000 acres of land. In making this location I do not comply with the calls full & complete, from the fact that I include a very small portion within said lines of the Cuivre River, from the fact that the two rivers are not parallel to each other, & that
242 they diverge as they recede from the Mississippi River.

Q. Please state any departure from the calls contained in the petition.

A. I have stated it did not comply with the calls in one particular. First, that having made the southeast boundary from the starting point H on the Mississippi River & sixty arpents below the mouth of the Dardenne tangent to the two great bends in the south Dardenne River would not leave a tract of sixty arpents along said river.

Q. Sixty arpents in width, you mean?

A. Sixty arpents in width. Secondly, that the northwest boundary, starting from letter B on the Mississppi River, & sixty arpents above the mouth of the Cuivre River, being run in a parallel direction to the southeast boundary, includes a very small portion of the Cuivre River, at or near its mouth & does not embrace a tract of 60 arpents in width along said river, nor does it include all the waters of said two rivers, so that in my opinion the plan I does not fully carry out all the calls of said concession.

Q. You are familiar, you say, with this country; you have travelled over it?

A. I have done a great deal of surveying in my time, sir.

Q. From your knowledge of the country, how is the location of
243 this range of hills here on the map?

A. From my recollection & knowledge of the country & examination of the map from which this is a copy, I think it is about as near a plat as you can get without an actual resurveying. I think it is about as near a compilation as could be made. That is on plan H constructed by J. Pitzman, & referred to as plan H in the stipulation of the parties.

Q. Can any two parallel lines be drawn, starting from these initial points B & H, running in any westwardly, southwestwardly or northwestwardly direction in such manner as to include all the waters of the Dardenne & Cuivre within this back line, or a line extended across in that same direction two hundred arpents from the hills?

A. No, sir. It cannot be. It would not be parallel to each other, they would not be parallel.

Q. This is not the only plan that can be drawn with two parallel lines running in a westwardly direction, is it?

A. No, sir; you can make as many drafts as you please but this is, about a southwest course. I mean between a south & a west, about a southwest course. If you were to come down this way southward or to make it parallel to take in the Cuivre River, you would have to
244 draw it in a different position again. In other words, it is not possible to draw two lines from the points B & H, on the Mississippi River, to include one or the other river, & make them parallel to each other.

Q. Please examine plat marked J & explain that.

A. On the map J there are two projections, one represented by the lines tinted yellow starting from the upper corner or Mississippi River at the letter B, sixty arpents above the mouth of the Cuivre River, & thence run in a west course to a point two hundred arpents west of the bluffs, I arrive at the northwest corner of the concession. I then make the southern boundary parallel to this northern boundary, & starting from the point H on the Mississippi River, 60 arpents below the mouth of the Dardenne, the line would cross the Mississippi River in its great bend to the southward; would cross the Mississippi River until it struck the bank again, and then projected out westwardly to another point two hundred arpents west of the bluffs, I locate the southwest corner of the claim, & the fourth or western boundary is made by connecting by a straight line the northwest and southwest corners. This projection would contain the smallest area of any of the proposed projec-
245 tions, containing between forty-four & forty-five thousand acres of land.

Q. Please state in what manner that conforms to these calls, or in what manner it departs from them.

A. In making this location in no particular does it conform to any of the general calls of the concession, except in the two initial points on the bank of the Mississippi River. They are between parallel lines, but do not embrace but one stream, & that is the Cuivre River.

Q. How is it as to the back line?

A. The back line would be two hundred arpents from the bluff; would be two hundred arpents distant from the bluffs, & would leave out entirely the calls for the Dardenne River & only embrace the Cuivre River within its metes & bounds.

Q. It would embrace the tract of land, would it not, 60 arpents in width on the Mississippi & running out without encroaching any upon the Cuivre, or nearly so, would it not?

A. Yes, sir. It would take the two initial points on the river B & H, making those starting points, taking the two initial points on the Mississippi River & making them starting points, but in no other particular would it correspond to the concession.

Q. Now please explain this plan (red line).

246 A. On said plan J there is also drawn another projection marked by the red line. The theory of this location is to assume the two points on the Mississippi River, B & H, & in going westward to follow the line that would be an irregular line & made sixty arpents distant from & parallel to all the meandering courses of the said two rivers until I reached a point in said general directions, with all its courses or sinuosities following the course of the river, both of them two hundred arpents west of the hills, taking the general course of the hills north & south of the two said rivers & bisecting the rivers in that general course. The bottom lands on the Mississippi are very wide; about five miles wide from the river back to the bluffs. There was also considerable bottom on either side of the two rivers as you go back into the interior of the country. Therefore the bluffs are not immediately contiguous at any one place, except you get anterior to the rivers, and that is the reason I say you would have to take the general range of these bluffs down.

Q. In what manner does that depart from the calls?

It would not be between parallel lines, unless you mean the lines were parallel to the rivers. It would not embrace all the waters
247 of the two streams mentioned, the Dardenne & the Cuivre, & would be about as liberal a view to take of a location of that

grant as it would be competent for a man to do, taking his own judgment as a basis of what the parties intended to do all the time.

Q. Would it embrace all the waters of the two streams?

A. It would embrace in that extend the waters of the two streams, & the branches that it received in it for sixty arpents besides. It would receive all the waters in that extent.

Q. Would you call this a line in surveying parlance, or a succession of lines, or a me'ndering line?

A. It would not be a direct or straight line, but it would be a series of courses, a series of meanders or courses, & the only question is what they would be parallel to.

Q. Meandering lines are straight lines, are they not, as far as they run in any one direction?

A. Yes, sir.

Q. They are never curved?

A. No, sir.

Q. So this, if meandering, would be a succession of lines?

A. A succession of lines like points in a curve; a succession of straight lines; the only mathematical manner of laying out a curve.

Q. Then if laid out in this manner there would be more than three lines besides the river line?

248 A. Yes, sir.

Q. It would be a departure from the calls of that grant?

A. It would be, sir; there might be a million of short lines in that.

Q. Please refer to plan K.

This plan is marked plan K referred to in the stipulations. It is constructed on a smaller & more circumscribed scale than the others, but it is intended to represent the claim following the two streams on their respective sides & sixty arpents from them, & then so projected as to be in all its contour sixty arpents distant from the headwaters of all the contributing streams of those two rivers. In other words, to fulfil the call of embracing or encompassing all the waters, & that would embrace over a million & a quarter acres of land.

Cross-examination by Mr. Bradford for complainant:

Q. Have you ever made an original survey according to calls for metes & bounds of a Spanish or French grant?

A. Many of them, sir. It has been mostly my occupation.

Q. Do you not mean that you have made resurveys of former surveys?

A. No, sir; I have made the originals, hundreds of them, in Missouri & Illinois for the U. S. Government.

249 Q. Do you mean of titles that had never prior to that been surveyed?

A. Yes, sir.

Q. By any authority?

A. By authority, sir. Ever since the year 1839; the last one I surveyed was in 1873.

Q. In making such surveys did you proceed according to instructions furnished you from boards of commissioners or surveyors-general?

A. My instructions have always emanated from the surveyor-general until the office was abolished in the States of Missouri & Illinois, & subsequently from the Commissioners of the Land Office or Secretary of the Interior, according to the original concessions always placed in my hands as my governing instructions.

Q. Your practice was to survey them according to the instructions contained, & not upon any decision of your own as to the calls of the titles?

A. Yes, sir; upon my own interpretation of the calls of the concession. The two last they gave me the calls of the concession, & told me to take them according to these calls. Of course I had to use my judgment in making those locations, my interpretation; they were somewhat ambiguous & vague, and after making the report they have never been adopted as the surveys of the United States. They lay there yet
250 undecided. There are various opinions on the subject, about the locations. I located them according to my opinions as to their location, and they are now in litigation.

Q. The surveys which you have made upon your own construction as to calls have not yet been approved?

A. No, sir.

Q. And remain subject to litigation?

A. Yes, sir.

Q. Where in such cases you have found an irreconcilable conflict between the calls for natural boundaries & theoretical courses & distances, which have you allowed to predominate as your guide in making such surveys?

A. Whenever natural objects, natural monuments, could be found on the premises, I have complied with those as near as practicable, & when I could obtain living witnesses, oral testimony, to show me where these original corners were, if found & if known or natural boundaries.

Q. Which would you allow to control?

A. A natural boundaries in preference to any other kind; always natural boundaries.

Q. Do you understand that to be a prevailing rule among surveyors in the location of Spanish grants, that natural boundaries, where
251 capable of identification, are always to control over course & distance when they conflict?

A. Certainly, sir; in all surveys courses & distances give way to known bounds, known monuments.

Q. With reference to plan H you have said that the line of hills represented by the etching on the plan represent in your opinion the hills referred to in the muniments of title, as near as the same can be located without an actual survey?

A. I do, sir.

Q. Have you ever measured the distance or distances from the river to said line of hills at any point or points along the front of the Clamorgan grant?

A. I don't think I did as an entirety. I have made surveys between those two rivers, the Dardenne & the Cuivre, & between the bluffs & the river, but they are not represented in this map, smaller tracts, smaller concessions, and I know from camping up there, being in the country a great deal in various times, professionally engaged, that these bluffs are about approximately the correct distance from the river bank, between four & five miles, on an average.

Q. With reference to plan I & the theory of location it represents, you have said that you would run the line from B, the upper terminus of the grant, about southwest?

A. About southwest.

252 Q. So as to be parallel with the line run from H, the lower ter-

minus of the grant & tangent to one or more of the bends of the Dardenne, in order that such line might not cross the Dardenne?

A. Yes, sir.

Q. Can you say that such upper lateral line would embrace a tract of land lying north of the Cuivre & fronting 60 arpents on the Mississippi River, & having a breadth of sixty arpents along said Cuivre River?

A. No, sir; it would not. It would embrace a very small portion of the Cuivre River, just at his mouth.

Q. Would it have been possible, according to your knowledge of the water's power in that vicinity, for Clamorgan to have built a water-mill in those early days on any portion of the Cuivre River so embraced by the plan I?

A. No, sir.

Q. Would said plan I have embraced any timber supply along the Cuivre River?

A. Little, or none; a very small proportion on either side of the river, near the mouth.

Q. I mean any saw-logs, or timber suitable for sawing.

A. All that would be embraced in that small piece of land between the bottom land of the river. There is the heaviest kind of timber in that bottom. The heavy timber, such as the burr-oak, walnut, is
253 underneath the bluff; what we call the live-oak & ship building is on the bottom. Between the bluff and the river is the heavy timber land.

Q. Said upper line would cross the river, then, before it reached the bluff?

A. Yes, sir.

Q. And thence its course would lie through the tract embraced between the two rivers?

A. Yes, sir.

Q. Can you say that the lower lateral line on said plan I, drawn from the point H, would embrace a tract between it and the Dardenne 60 arpents in width, & fronting 60 arpents on the Mississippi River, & lying south of said Dardenne River?

A. It would be sixty arpents front on the Mississippi, but wouldn't be a tract of land 60 arpents in width along the river Dardenne, as it would be at two points tangent to the river itself, leaving no space between them.

Q. It would not embrace, then, such a tract of land?

A. No, sir; it would not.

Q. The tract embraced between the said line of the Dardenne would be less than an arpent in some points, & three or four miles in others?

A. Yes, sir. It would be a tract of land of irregular width.

Q. It wouldn't be such a tract of land, then, as is known in land law & surveying usage, as a tract sixty arpents in width south of
254 Dardenne, fronting 60 arpents on the Mississippi?

A. No, sir.

Q. Could you say that the tract represented by such parallel lines would encompass all the waters of the Dardenne & Cuivre River?

A. No, sir.

Q. It would receive all the waters of the Dardenne River as the Gulf receives all the waters of the Mississippi, would it not? It would receive them, but would not encompass them?

A. It would receive them, be contiguous to them. It would receive the waters of the Dardenne & Cuivre at the mouth. In other words, the discharge of those rivers would be within this limit.

Q. With reference to the plan J & the tract thereon represented in yellow lines, you have said that you would draw the upper side line from B, the upper terminus of the front, due west, and would draw the lower side line from H, the lower terminus of the front, also due west?

A. I did.

Q. Terminating each one at a point two hundred arpents from the first hills?

A. Yes, sir.

Q. And then uniting their termini by a third line, would said
255 lines encompass the entire extent of the waters of the two rivers Dardenne & Cuivre?

A. They would not.

Q. Would said lines encompass any portion of the waters of the Dardenne?

A. None.

Q. How far would the nearest point of the land embraced within said lines be from the Dardenne River?

A. About five miles; the nearest point on the Mississippi River would be about five miles. The nearest point on that yellow-colored tract would be five miles from the mouth of the Dardenne River, five miles north of the mouth of the Dardenne.

Q. It would not have been possible, then, for Clamorgan to have built a mill upon said tract, and also upon any of the waters of the Dardenne?

A. No, sir.

Q. Wouldn't the lower side line on said plan I represented in yellow for the first seven miles run up the Mississippi River?

A. It would, sir; in other words, it would run through the river.

Q. Run up about the middle of the river?

A. Yes, sir; at least 5 miles; something near 7 miles.

Q It would strike the land, then, about the middle of the central tract, would it not?

A. It would, sir; a little above the centre—north of the center.

Q. The southwest corner of said tract would be within the central tract, as described by Clamorgan?

A. Yes, sir.

Q. Would it have been possible, from what you know of the
256 size & condition of the banks of the Cuivre, so far as said yellow lines embrace it, for Clamorgan to have built a water-mill on said stream within said tract?

A. I think not, for the reason that there is but very little fall in that distance, in said line.

Q. Is it not navigable along there for small vessels?

A. I have seen rafts of wood, rafts of logs, in high waters, conducted down the river, but I have seen no steamers of the present formation of vessels trafficking that river at all. I have seen merely skiffs & boats of that kind go up. When the river is high there is a good deal of water in the river, & it is very deep, too. It is deep enough for a steamer to go up, if it is only wide enough. It runs through a very alluvial soil. But I have never seen a steamer go up.

Q. It is possible for them to go up in high water, is it not?

A. Yes, sir; they can go up in very high water. Certainly the stream is very deep.

Q. With reference to the plan J and tract thereon, represented in red lines, you have said that the theory of location was to run from the upper & lower termini of the front waving lines, parallel to the
257 meanders of the Dardenne & Cuivre, terminating such waving

lines at a point two hundred arpents distant in the interior from the foot-hills, & uniting such points by a third straight line? Can you say that such point would embrace or encompass all the waters of the Cuivre & Dardenne?

A. I think not.

Q. Don't you know it would not?

A. I know it would not. I know the streams run away beyond that.

Q. Would said tract embrace, according to your knowledge of the Cuivre, any mill-sites where Clamorgan could have constructed a water-mill?

A. I don't think he could have got a location for a mill to have sufficient fall in the stream to turn a wheel, as all within that distance is an alluvial soil, & very little elevated *by* the Mississippi River.

Q. All the theories of location represented by the plans H, I, & J, are predicated upon the proper location of the hills, are they not?

A. Yes, sir.

Q. They are further predicated upon the supposed identity between the hills as approximately represented on said plans with the hills referred to in the muniments of title?

A. Yes, sir.

258 Q. If, therefore, the hills are incorrectly laid upon said plans, or being correctly laid down, if the muniments of title referred to other hills, then the conclusions from the modes of location represented in said plans are all erroneous, are they not?

A. They would be.

Q. What do you understand by the term "westwardly," in land law & surveying?

A. It is a very indefinite, but any course that would be westward of a meridian line.

Q. Any such course would answer that indefinite call?

A. That would be an indefinite call; more usually a westwardly course is somewheres between a northwest & southwest, or in a segment of a circle 90 degrees in a space, a sector, or a segment.

Q. Would north 20 degrees west be westwardly?

A. Certainly; in contradistinction from the fact that it is not eastwardly.

Q. Would south 10 degrees west be westwardly?

A. It would, sir.

Q. You consider westwardly a very indefinite expression in surveying a land law?

A. A very indefinite. I would have to have some known & well-determined points to determine how much I should run west of north or south.

259 Q. From your knowledge of the upper waters of the Cuivre & Dardenne rivers, can you say that they afforded favorable locations for the construction of water-mills in 1797, or thereabouts?

A. For some distance up the main stream or the two forks, one called the northern & the other called the southern of the Cuivre River, there would be very favorable sites for water-mills.

Q. On either of these forks?

A. Yes, sir, on either of them, for some distance; on either the main stream or on the forks.

Q. How far up from the junction of the two forks are there favorable mill-seats, on the south fork of the Cuivre?

A. I suppose for the distance of eight to ten miles above the junction, in a westward direction, out towards Troy or Lincoln County.

Q. Are there any favorable mill-seats on the Cuivre, below the junction of the north & south forks?

A. Yes, sir.

Q. How far below said junction?

A. From four to five miles; six miles below before you come into the low lands.

Q. There are no favorable mill-seats, then, upon the Cuivre River further down than six miles, say, below the junction of the two forks?

A. Not natural ones. They make artificial ones by erecting dams.

260 Q. Please state, now, with reference to the lower stream, the Dardenne?

A. On the Dardenne you can get mill-sites nearer to the Mississippi River than you can on the Cuivre?

Q. How far up the Dardenne would you have to go to obtain such favorable mill-sites as would have been eligible in those times?

A. Right at the bluffs about five miles or six miles from the river bank, where the bluffs come close together. The valleys are smaller on the Dardenne than they are on the Cuivre—narrower—the bluffs come nearer to the stream; there are greater facilities for erecting dams to obtain water-power.

Q. What do you understand the expression employed in Clamorgan's petition, "so as to encompass all the waters of the above mentioned rivers Dardenne & on Cuivre, in order that the applicant might build mills thereon," to mean in its general acceptation?

A. I should think that would be a very indefinite expression. It might mean to include all the tributary streams, or it might—which would be my interpretation—to limit it to the distance of 60 arpents. That would include all streams within the limits of the grant emptying into the respective streams, but still it is very indefinite.

261 By Mr. GROVER:

Q. When you say 60 arpents, you mean 60 arpents on each side of the river?

A. Each side of the respective streams; still it is a very vague expression.

By Mr. BRADFORD:

Q. What do you understand these words to mean, as used in Clamorgan's petition, "The tract of land bounded on one side by the little river called La Charette, alias Dardenne, & on the other by the little river called au Cuivre, one on the south & the other on the north, to serve as boundaries to those two sides," with reference to the following language employed by Carondelet in his ratification, "The tract of land situated between the two rivers Charette & Cuivre, both emptying into the Mississippi"; without reference to course, distance, or any other thing, what do you understand the tract to be, described in that way?

A. It would include all the land fronting on the Mississippi River, & extending backwards between the two said rivers.

Q. How limited to the rear by a line uniting their head-waters?

A. I should follow those streams to their head-waters.

Q. How would you run the back line?

A. After determining where the head-waters of the two streams
262 were, I should run a straight line back, uniting the head of the streams. I would follow the meanders of those streams, there being no depth in it.

Q. What do you understand these words to mean, as employed by Clamorgan in his petition, "Sixty arpents of land in front on the banks of the Mississippi, immediately adjoining the mouth of the first above named river La Charette in descending the current of the Mississippi," taken in connection with the language of Carondelet, "Also sixty arpents to the south of said river Dardenne, having the Mississippi in front"?

A. I should interpret it as being a tract of land of sixty arpents in width along that river, from the Mississippi River back; there is no depth given there; from its source I would follow its course.

Q. Would that tract extend back as far as the central tract along said Dardenne?

A. It would, sir, run to the sources of the Dardenne.

Q. What do you understand by these words copied by Clamorgan's petition: "Sixty arpents in front also on the banks of the Mississippi, joining immediately to the upper side of the mouth of the second
263 above named river Au Cuivre, & ascending the current of the Mississippi," taken in connection with this language, used by Carondelet, "also sixty arpents to the north, sixty arpents to the south of said rivers, which serve to determine the situation of said land, having the Mississippi in front"? You understand that to mean the same?

A. Yes, sir. That would mean that there would be a strip of land on the upper side of the Cuivre 60 arpents in width, & following the meanders of the river from the mouth to its source, there being no depth mentioned.

Q. If called upon as a surveyor to survey the three tracts of land granted to Clamorgan, would you have any difficulty in locating them, if the reference to course & distance included in Clamorgan's petition, & partly referred to in Carondelet's confirmation were stricken out, or had never been made?

A. Well, in the first place, as to the question of these calls, I would take the two rivers as my base lines. I would locate the first claim, embracing all the land between the two rivers—this central grant & the next one. I should take the two rivers as a basis for the location of the two other claims of sixty arpents each in width—one on the north
264 & one on the south of those two rivers, & I would follow those rivers in their direction to their sources.

Q. You would then have no difficulty in locating those tracts according to the muniments of title if divested of the conflicting calls for course & distance?

A. Not at all, sir.

Q. The descriptions, barring course & distance, you think to be clear & precise?

A. Yes, sir; I would have natural monuments given to me—rivers—to follow them.

Q. In your experience have you ever been conversant with a large title more satisfactorily described than these tracts are described, so divested of conflicting calls for course & distance?

A. I will state in answer to that, my experience in all such calls of large tracts is, that there has always been more or less ambiguity.

Q. They are as a fact very ambiguous, are they not?

A. Ambiguous from the fact that at that early day parties had no knowledge of the country to the extent of which they claimed. That is our experience in this county. They are all more or less ambiguous, several yet remain unsurveyed, on account of their ambiguity unlocated.

Q. You consider, then, the Clamorgan grants exceptionally well

265 described, when divested of the conflicting calls for course & distance?

A. Yes, sir. If you divest them of those calls, parallel lines & courses & distances beyond the bluffs, then I could run them out.

Q. You consider them exceptionally well described, so divested?

A. Yes, sir,

Q. What is the distance in miles of two hundred arpents?

A. It is seven miles & a quarter, a small fraction over a quarter.

Q. Do you understand that Clamorgan specifies the distance of two hundred arpents absolutely?

A. Well, my interpretation, or what would be my practice, there being no natural object to go to, I should measure precisely the two hundred arpents. If he called for any natural point, I should go to it, whether it be large or less, but I should stop at two hundred arpents; that is my practice.

Q. Do you understand the language of Clamorgan specifying course & distance to have been adopted by him merely for the purpose of locating the back line?

A. That is all, sir.

Q. You understand that he had sufficiently described the three tracts with reference to their lateral extent & intended to furnish a rule by which to locate the rear line?

A. That is all, sir.

266 Q. Do you think from the geographical condition of that country, its streams, & hills & valleys, mill-seats, timber supply, & loggins facilities, that he was mistaken in the results which would follow the of those courses & distances to such locality?

A. I think that to comply with his calls would embrace a section of country that would be suitable for his purposes—raising cattle. It would embrace the prairie country back of the hills. He would have location for his mills, & would have a large supply along the rivers Mississippi, Dardenne, & Cuivre of lumber for saw mills, & lands suitable to raise crops to supply his grist mills. This remark refers to the tract of land on plan J represented by red line.

Q. With reference to the plan K, in your testimony-in-chief, the dotted red line, embracing the entire valleys of the two streams Dardenne & Cuivre, is designed to be sixty arpents from each of the main stems of said streams, & to encompass all the lands drawn by said streams & their branches, being sixty arpents generally from the fountain heads of said streams & all their branches, is it not?

A. Yes, sir; that is what it purports to represent.

Q. Would said dotted lines circumscribe a tract *a tract* of land encompassing all the waters of said streams?

A. It would.

267 Q. Would it afford extensive & favorable seats for water-mills, abundant timber supply, abundant cattle range, & logging facilities?

A. It would.

Q. Would it afford such advantages to a greater extent than any of the other plans as to which you have testified?

A. It would, sir; inasmuch as it embraces a larger territory of country.

Re-examination by Mr. EMMONS:

Q. A tract 60 arpents in width, lying right along the Dardenne Creek, would necessarily make the Dardenne Creek run parallel, wouldn't it?

A. It would make a line parallel to the creek.

Q. The course of it would have to be perfectly straight, to make that kind of a location, would not it?

A. You would have to make a line parallel to the creek. It wouldn't be a straight line. It would consist of as many meanderings as the creek. This plan I makes a straight line & tangent to the creek at the points.

Q. There would have to be two lines in order to have a tract sixty arpents in width fronting on the river & running out westwardly? There would have to be two lines, & one of these lines couldn't be the Dardenne Creek?

A. No, sir.

Q. So, then, in running it in that way there wouldbe several spaces between the Dardenne Creek & the line?

268 A. there would be several irregular spaces of irregular dimensions.

Q. Wouldn't these red lines encompass all the waters of the Dardenne & Cuivre between the western boundary & the Mississippi River?

A. Yes, sir.

Q. Would they not encompass all the waters of those two rivers between the western boundary line & the Mississippi?

Yes, sir. I have testified to that before. Within their extent it would encompass all the waters. It would encompass all the streams emptying into them within their banks.

Q. It would encompass all the waters in these two rivers that are within those limits?

A. Yes, sir; all to the extent of this line; all the tributary waters coming in.

By Mr. BRADFORD:

Q. Would not a ten-acre tract of land at the mouth of each encompass the waters in the same sense?

A. Yes, sir.

By Mr. EMMONS:

Q. In saying that the lines encompassing all the waters between the two rivers Charette & Dardenne from the Mississippi to the sources of those streams would include all that land, then you mean to ignore this line, which is two hundred arpents west of these hills?

A. Most undoubtedly the proposition is predicated upon that supposition.

269 Q. But, recognizing that as a monument, as something that is fixed & certain, then the said lines in their extent would not encompass all the land or include all the waters of the Dardenne lying between the Mississippi & between those two creeks?

A. No, sir; going two hundred arpents west of the foot of the hills would not encompass all the waters draining into these two streams.

Q. In your examination of Spanish surveys, have you ever known a tract of land anywhere to be described as a tract of sixty arpents fronting on the Mississippi, or any other front on the Mississippi, following a meandering line parallel with the river, & going to its source?

A. No, sir; I don't know of any other case. I will answer that in all cases that I am familiar with the lines have been bounded by what we call direct lines, straight lines, except where the river itself has been given as a boundary—the Mississippi River.

Q. Is not that the rule in all Spanish surveys?

A. All that I am familiar with, sir, in this locality.

Q. Do they recognize any such lines as curved lines in surveys? Are they recognizable anywhere that you ever heard of?

270 A. No, sir, except where the stream itself is particularly called as a boundary. For instance, St. Ferdinand gives as a boundary a little river called Cold Water Creek; it is a boundary between the commons, & Carondelet gives south & north of the river Desperes. The creek is made a boundary between them, & no line parallel to them.

Q. In calculating the area of any part of that line, how do you arrive at it—by a curved line, or a succession of straight lines meandering a creek?

A. By a succession of straight lines meandering a creek, taken at short intervals, giving course & distance. The same with the Cahokia fields and the other side of the river. In Illinois Cahokia Creek or river Lavalle is made a boundary, & the foot of the bluffs are also made boundaries.

Q. I will ask you now if you start from a point here at the mouth of the Dardenne, & also at the mouth of the Cuivre, &, following the current sixty arpents down the stream & sixty arpents up the stream—the Cuivre—& running two lines westward, either parallel to each other or separate lines parallel to the creeks—that is, the line running north of the Cuivre parallel to the Cuiver, with its meandering, and the line running south of the Dardenne parallel to the Dardenne, with its

271 meanderings—whether two such lines, whether straight or following those meanderings, running from these initial points, will include a tract of sixty arpents in width on each side?

A. I should think not, sir, owing to the fact of the direction of the Mississippi River at these two points.

Q. Then, in order to get those tracts by running either these straight lines or parallels to these rivers, you would have to abandon the initial points to get a tract sixty arpents in width on each side?

A. Yes, sir. I would have to depart from B & H.

ERNEST H. HESSE, being duly sworn, testified as follows:

Direct examination by Mr. EMMONS:

Q. Please state your name in full.

A. Ernest H. Hesse.

Q. What is your residence?

A. St. Louis.

Q. What is your profession?

A. I am a surveyor & civil engineer.

Q. How long have you been engaged in that business?

A. I have been engaged for several years; in the first place, in the city engineer's office; subsequently I was custodian of the surveyor general's office for seven years; & since that time I am private engineer—about eleven years in all.

272 Q. Have you been in the habit of making land surveys?

A. Yes, sir.

Q. For how long a time?

A. Since 1869.

Q. Have you ever surveyed or re-surveyed any Spanish claims?

A. Yes, sir, quite a number: I have been U. S. deputy surveyor under instructions from the Commissioner of the General Land Office in several cases. Those cases are mostly re-surveys.

Mr. BRADFORD for plaintiffs:

Q. Were they not all re-surveys?

A. Those cases were under instructions from the government.

By Mr. EMMONS:

Q. You have read the calls specified & mentioned in this petition, have you?

A. Yes, sir; I have read that in the original language at the time.

Q. Is it possible to locate that grant or survey & have regard to all its calls?

A. As far as I can see, it is not sir.

Q. Will you please state why. Give your reasons why it cannot be done, showing the conflicts & contradictions of the data.

A. According to the calls of the concession, this tract of land shall be bounded by two parallel lines, & those two lines together with the back line of the grant on the river shall encompass the waters of the Dardenne & Cuivre. If those two lines be run parallel, it is im-
273 possible to encompass those waters, & if they are not run parallel, they will not comply on that part with the calls of the concession or with the order of survey; and the course & direction is so indefinitely given, that there is a space of 180 degrees or one-half of a circle in which they could be located. A westwardly course is an absolute uncertainty; you may as well call a course a westwardly course that is one degree west of north or west of south. You can also call it a westwardly course that is due west or forty-five degrees each way north or south from west. Then I find that the order of survey calls for sixty arpents on each side of these two rivers; from the place itself, the lines as the river runs shows that it is impossible to make those sixty arpents in width. If you measure down stream & up stream 60 arpents, it will not be 60 arpents wide. It will merely run into a point. You will have to abandon one call to locate another before you can comply with all the calls of the order & make a survey of them. You may make a thousand surveys, & each one will stand the change of being wrong, every one.

Q. Please give an explanation of this plat H, & upon what theory it was drawn.

A. This plan H as far as I can see is as near as possible a cor-
274 rect representation of the topography of the country as it can be. All my knowledge as to the topography, &c., is derived from the official plats that I handled for seven years in my office, the township plats.

Q. What do you state in reference to plan I?

A. This plan I? I can only say that plan is a conjecture made upon some of the calls of the concession, starting sixty arpents below the mouth of the Dardenne & sixty arpents above the mouth of the Cuivre, & thence running in about a course in a southwestwardly course about south 45, I think, two hundred arpents beyond the foot of the first hills & then closing the survey up by a straight line connecting the two rear points, the westwardly corner with the most southwardly corner. I do not, however, see that it embodies or encompasses the waters of the two streams. The two lines are run parallel, I see, upon this plan.

Q. Can any two parallel lines be drawn from these initial points running westward the distance of two hundred arpents to the foot of the first hills, then connected by a back line? Can that be run so as to include those two streams to the extend of those lines?

A. No, sir.

Q. Then this survey is impossible on the theory of parallel
275 lines running from these initial points?

A. Yes, sir; it seems so to me.

Mr. BRADFORD for plaintiffs:

Q. You don't mean to say you couldn't run the lines actually as they are laid down?

A. I can run the lines, but not in conformity with the calls. I can run any line at all.

Mr. EMMONS:

Q. The lines would cross one or the other of those creeks at same point or possibly both?

A. Yes, sir.

Q. Examine plat J & state upon what theory these diagrams are drawn?

A. I see that the yellow line is upon the theory of a due western course starting at the begin'ing point, 60 arpents below the mouth of the Dardenne River, & thence in a due westwardly course two hundred arpents beyond the first hills. The other line is from the same initial point of the former plat (plat I) to a point 60 arpents above the mouth of the Cuivre, & thence running a due westwardly course two hundred arpents back of the hills, connected by a line in the rear, a straight line; this only embodies the waters of the Cuivre, though.

Q. I will get you to state the theory upon which this red line has been drawn, what calls have been abandonned in making this location?

A. The red line appears to be drawn as a line of meanders par-
276 allel to the meanders of both streams, starting at the initial points H & B, & running parallel with the streams until to a point two hundred arpents beyond the hills & connected thence by a straight line. I don't know what the course is or distance. The 60 arpents south of the Dardenne, or rather below the Dardenne, show distinctly on that map that it don't live sixty arpents between the river & the line.

Q. In order to do that, the Dardenne would have to flow into the Mississippi, forming a right angle, would it not?

A. Yes, sir.

Q. Which it does not?

A. No, sir.

Q. And so with the Cuivre?

A. Yes, sir.

Q. Now I will ask you the question generally, unless these streams came in there at right angles it would be impossible to have a tract of land sixty arpents in width, either below the mouth of the Dardenne or above the mouth of the Cuivre, would it not, starting from an initial point sixty arpents?

A. Yes, sir; it would be impossible unless you would run an off-set in order to obtain those 60 arpents.

Q. Examine plan K & state generally the theory upon which that plan has been drawn?

A. Plan K is drawn upon a theory as it appears from the appear-
ance of it, that a line 60 arpents or a point from the two points
277 60 arpents above the Cuivre & 60 arpents below the Dardenne, curved lines have been drawn, so as to encompass all the waters, tributaries & everything of the two streams.

Q. In what manner does this plan abandon the calls of this grant, or how does it conform to them?

A. The grant provides for the lines to be extended two hundred arpents beyond the first hills. This runs about sixty miles back; 50 or 60 miles. That is this green shaded part. It would go over a number of hills & two hundred arpents beyond all of them. It would fail entirely on that point of the grant that the line should be run straight two hundred arpents beyond the first hills.

Q. It would also fail on the parallel lines, would it not?

A. It would fail on the parallel lines entirely.

By the COURT:

Q. Required to survey this grant or concession without instructions, which of the figures or plans, if either, to which you have referred in your testimony, would you adopt?

A. I do not know that I would adopt any of these plans; they are merely three segments made on paper. In such cases a great deal depends upon the investigation of the territory itself. I do not know
278 that I would adopt any of the three.

Cross-examination by counsel for complainant:

Q. With reference to the plan H can you say of your own knowledge that the hills therein represented by etched lines are truly & faithfully represented as they now exist on the ground?

A. Not according to my own knowledge; that is personal knowledge upon the ground.

Q. Have you ever measured a line from the Mississippi River out to said lines along any portion of the front of Clamorgan's grant?

A. I have not.

Q. Can you say of your own knowledge that said hills are represented in said plan H within two miles of their exact locality?

A. From the appearance of the United States plats that I had under my charge, they appear to be as near as anything correct, but that is all I can say. I have no knowledge of the ground.

Q. How long has it been since you last examined said official plats of the United States surveys?

A. The last time I saw them, was during my term in the legislature, where those documents have been removed to in that very office; that was in the winter of 1875.

279 Q. With reference to the plan I & the theory of location thereon represented by red lines, results from running the upper and lower side lines from the points B & H, sixty arpents above and sixty arpents below the mouths of the Cuivre & the Dardenne in a southwest direction, does it not?

A. Yes, sir.

Q. Those side lines are supposed to run southwest, are they not?

A. It depends on the definition of southwest; they run in a southwesterly direction, about south 45 west, very near so.

Q. The upper of said lines would cross the Cuivre River before it would strike the hills & within a few miles from its mouth, would it not?

A. According to the plat; yes, sir.

Q. After crossing the Cuivre, its course would lie through the centre grant or middle tract, would it not?

A. If the centre grant embodies the lands between the two rivers, it does.

Q. It terminates then at the supposed distance of 200 arpents from said hills?

A. Yes, sir.

Q. About the middle of the central tract?

A. Yes, sir.

280 Q. The lower line drawn from H is intended to run parallel with the upper line from B as near the Dardenne River as possible, without crossing it; that was the theory on which it was drawn?

A. If it is to run parallel, there can be no consideration about crossing the Dardenne at all; but the lower line seems to have been the first line laid down.

Q. The lower line was intended to be the first line of the plat I, and to be drawn as near the Dardenne as possible without crossing it, & the upper line from B was designed to be drawn parallel to such lower line?

A. Yes, sir.

Q. And the back line was designed to be a right line, drawn generally 200 arpents from the hills uniting the termini of said side lines?

A. Yes, sir.

Q. Can you say that such tract of land, embraced within such lines, would encompass all the waters of the Dardenne & the Cuivre Rivers?

A. No, sir; it would not.

Q. Would such lines embrace a tract of land known to surveyors as a tract lying north of the Cuivre & fronting 60 arpents upon the Mississippi River?

A. No, sir.

Q. Would it not embrace a small triangular tract only, north of & near the mouth of the Cuivre?

A. Yes, sir.

281 Q. Can you say that the lower side line would embrace a tract of land known to surveyors and to land law as being a tract 60 arpents to the south of the Dardenne and fronting 60 arpents on the Mississippi River?

A. It would only be a tract of irregular width, with 60 arpents on the river—in some places more, in some places less. It would not be a tract of 60 arpents wide clear through.

Q. Would it not be narrowed in places to a mere nominal width, & induced in others to a width of 4 to 5 miles?

A. Yes, sir; according to the diagram.

Q. With reference to the plan J and the tract of land therein represented in yellow lines, the theory of its location is by drawing the upper & lower side lines due west from the points B & H, 60 arpents above & 60 arpents below the rivers Cuivre & Dardenne?

A. Yes, sir.

Q. The back line in said plan is designed to start from the terminus of the upper of said lines, 200 arpents west from the foot of the hills, and to be drawn to the terminus of the lower of said lines, at a point also 200 arpents from the foot of said hills, is it not?

A. Yes, sir; it is.

Q. Would the tract so enclosed embrace any lands on the Dardenne River?

A. No, sir; none.

Q. Would it embrace any part of the waters of the Dardenne River?

A. None, sir.

282 Q. Could Clamorgan have build upon said tract any mills which would also have been upon any of the waters of the Dardenne?

A. No, sir.

Q. About how far would the nearest part of such tract have been from the nearest point of the Dardenne?

A. About 4 miles, at least.

Q. Would not the lower of said lines, after leaving the point H, run for 6 or 7 miles up the Mississippi River, possibly crossing the river & touching the Illinois side?

A. Yes, sir.

Q. Would not said line strik' the land in the western side of the river, about midway between the mouths of the Dardenne & Cuivre?

A. Yes, sir.

Q. Continued due west, would it not cross the Cuivre River at the most southerly bend?

A. Yes, sir.

Q. With reference to plan J & the tract thereon represented in red lines, the theory of location results from drawing waving lines from the upper & lower termini of the front, parallel with the Dardenne & Cuivre rivers, & extending into the interior 200 arpents from where said waving lines would intersect the hills?

A. Yes, sir.

Q. The back line is to be a straight line uniting said termini of said waving lines?

283 A. It is a straight line.

Q. Can you say that said tract would encompass all the waters of the Dardenne and Cuivre Rivers?

A. No, sir; it would not.

Q. It would receive those waters, wouldn't it?

A. Yes, sir; it would receive all the waters within the very mouth. All the waters of the two rivers would pour into the very mouth. Of course the very mouth itself would do the duty, making allowance for evaporation, &c.

Q. Would not a tract of land ten (10) acres wide, in the west bank of the Mississippi, all along the front of the Clamorgan grants, extending above the Cuivre & below the Dardenne, encompass all the waters of said rivers in the same sense?

A. Yes, sir.

Q. Would said tract of land so represented in red lines in Plan J enable Clamorgan to build mills, cut & float timber, & monopolize the bank on all the waters of the Cuivre & Dardenne?

A. No, sir; not on all the waters. By waters, I understand you to mean the different beds of those creeks & tributaries.

Q. Now, with reference to plan K, the theory of location it represents is that of drawing the red dot'ed lines from points 60 arpents

284 above the Cuivre & 60 arpents below the Dardenne, to run into the interior at an average distance of 60 arpents from the said streams, skirting along 60 arpents out from the head springs of all their sources & branches, so as to encompass all the waters of said streams, is it not?

A. Yes, sir.

Q. Would the location of the grant to Clamorgan according to said plan K give him absolute control over all the mills sites, timber supplies, cattle range, logging privileges & facilities to be found upon all the waters of the Cuivre & Dardenne?

A. Yes, sir; & a good deal more, because the dividing ridge between these smaller streams is very seldom as wide as two miles, which is 60 arpents. It would take in the head-waters of several other streams. It is just a small ridge invariably that you can stand on top & poor

down dipper of waters, & one part will run into one creek and one part into the other. I think that 60 arpents, according to my opinion of the country, runs beyond the head-waters of the streams.

Q. Would such theory afford such monopoly of such privileges to a greater or more complete extent than the theories of location represented by the other plans as to which you have testified?

A. Yes, sir.

285 Q. In surveying the Spanish grants, or any other character of grants or deeds for of wild lands, is it not the usual custom of surveyors when there is a repugnance between plainly identified natural boundaries & mere theoretical courses & distances to subordinate the latter to the former in effecting surveys and locations?

A. To a certain extent it is.

Q. If a call be to run from a known initial point west 200 arpents to a river, & you identify that river, but find it 250 arpents, would you run to the river or stop at the 200 arpents?

A. Our instructions at the time in the surveyor general' office were that a call if definitely given, without any doubts about it, governs. The other instructions are these: for instance, we run from a certain sectional corner to retrace lines, & we have the original field-notes on hand stating that at such a distance there is a certain corner; if in identifying that corner, although it be a quarter of a mile nearer or farther off, the corner only counts.

Q. The rule then is generally to sacrifice mere corners & distances to well-identified natural boundaries?

A. Yes, sir.

Q. Do you consider in your profession that there are any safer
286 calls for natural monuments in the description of grants than large & well-known rivers?

A. I can only say that they are easily to be found, but very uncertain; very changeable.

Q. With reference to this language of Clamorgan's petition compared with the language following it, quoted from Carondelet's ratification, I wish you to state what you understand as a surveyor to be its meaning:

"Under these unfortunate circumstances your petitioner presumes to claim of your goodness that you will be pleased to grant him on the western side of the river Mississippi, some leagues above the mouth of the Missouri, the tract of land bounded in one side by the little river Calle La Charette, alias Dardenne, & on the other by the little river called Au Cuivre, one on the south & the other on the north, to serve as boundaries to these two sites."

"I have rec'd your official note dated the 11th of last March, in which you state the motives which have induced you to grant to Mr. Clamorgan the tract of land situated between the two rivers Charette & Cuivre, both emptying into the Mississippi, to serve which determine the
287 situation of said land, having the Mississippi in front."

A. I understand that the tract embraces the lands lying between & adjoining the two rivers, Cuivre & Dardenne.

Q. How would you run the back line of such a tract?

A. You have abandonned the calls for courses and distances, and therefore I could not run a back line to the description of the quotations; it does not call for anything of that kind.

Q. When you say that the tract so meant has the Cuivre River for its boundary on the north, & the Dardenne for its boundary on the south, do you mean the whole of said rivers or parts of them?

A. I mean neither one nor the other, & I mean both, just as you wish to have it, because there is no back line given.

Q. I am not talking about a back line.

A. Well, I mean both & neither, just as you wish to have it.

Q. I wish that it should be bounded by the whole extent of each river in each side; do you mean that?

A. Your question was as to the said boundaries, & I gave you that answer, that according to your quotation it was bounded, or at least it adjoined the rivers. I do not say to what extent.

Q. Well, please say.

288 A. I cannot say to what extent; that is the reason I mean both and neither. You have abandonned all other courses, consequently I cannot give you the extent of the lines back.

Q. What do you understand this language of the petition of Clamorgan & confirmation of Carondelet to mean: "Petitioner wishes moreover that you would be pleased to grant to him 60 arpents of land in front on the banks of the Mississippi immediately adjoining the mouth of the first above named river La Charette in descending current of the Mississippi, and again 60 arpents in front also on the bank of the Mississippi adjoining immediately to the upper side of the mouth of the second above named river Au Cuivre and ascending the current of the Mississippi." "Also 60 arpents to the north and 60 arpents to the south of said rivers which serve to determine the situation of said land, having the Mississippi in front, all which I do approve; Clamorgan having deserved this from the government."

A. It means no tract of land at all; it means that line & these points (indicating) and nothing else.

Q. It does not mean two tracts of land either?

A. No; it means the lines, the initial points; it does not state how it shall be run.

289 Q. You understand than that Clamorgan did not intend to ask for any land north of the Cuivre nor south of the Dardenne?

A. I don't understand any such thing. I understand from reading the petition before that he had a call for two parallel lines north & south of the two rivers.

Q. How much land did he ask for north of the one and south of the other?

A. From the mouth of the rivers, he went 60 arpents above and below; the initial points, I mean.

Q. How much land did he petition for north of the Cuivre and south of the Dardenne?

A. I could not tell you, sir, because there was no survey made of it.

Q. What do you understand the expression in Clamorgan's petition to mean, "said lines encompassing in their extent all the waters of the above mentioned rivers La Charette alias Dardenne & Au Cuivre; in order that hereafter the petitioner may erect saw & grist mills thereon: also place there a number of cattles, have slaughter-houses, & send salt meat to the capital?"

A. All I can make out of that is that he tried to get as much as he could, but there is nothing definite in it to locate any lines; he
290 might not have meant all the creek & river beds; if he has meant these, this diagram K would come in very neatly. I do not know what he meant by it. I cannot tell.

Q. Do you think he meant part of those streams?

A. He has named these streams; whether he meant part or the entire

streams I could not tell. The contradiction that comes to my mind is that he calls for a back line.

Q. But we are not quoting that language; the question is what those words mean; you say it says all, but it doesn't mean that.

A. From the wording of the petition it appears that he did intend to get all the waters or that he tried to get them.

Q. In order that he might build mills on all of them whenever he could?

A. Possibly he calls for the building of mills & erecting of grist-mills.

Q. What is the variation of the needle?

A. It differs very much, sir. In the days when the United States surveys were executed in this portion of the country, it was about 8 degrees east; lately, I have found it as low as 6 degrees & 30 minutes within about 20 or 30 miles from this locality.

Q. Is it increasing here or decreasing?

A. It is decreasing, sir.

291 Q. You have stated that you were familiar with the old Spanish surveys; at what variation were they generally run?

A. The Spanish surveys were run by the magnetic meridien only; you mean those done by old Antoine Soularde, the Spanish surveys; he was the only Spanish surveyor-general.

Q. Supposing the variation to be 9 degrees east, what would be the true bearing of a Spanish line run north 20 east magnetic?

A. It would be north 11 east.

Q. Supposing the variation to be 8 degrees, what would be the bearing of a Spanish line run north 12 west magnetic?

A. North 20 west.

Q. What is the variation of the needle in Maine; east or west?

A. From the changes at Ohio in the State of Maine it is west?

Redirect examination by Mr. EMMONS, counsel for the United States:

Q. I will ask you to give me your idea of the meaning of this language, "The petitioner presumes to claim of your goodness, that you will be pleased to grant to him, on the western side of the river Mississippi, some leagues above the mouth of the Mississippi, a tract of land bounded on

292 one side by the little river called La Charette, alias Dardenne, and on the other side by the little river Au Cuivre, one on the south, the other on the north, will serve as boundaries to the two sides." What tract of land is described there? Is there a tract of land described going over the front or rear line?

A. No, sir.

Q. Then that may be any tract of land lying between those two rivers, the front and rear lines to be afterwards defined, may it not?

A. Yes, sir.

Q. What does this language mean: "The petitioner wishes, moreover, that you would be pleased to grant to him 60 arpents of land in front on the banks of the Mississippi, immediately adjoining the mouth of the first above-named river, La Charette, in descending the current of the Mississippi, and again 60 arpents in front, also on the banks of the Mississippi, adjoining immediately on the upper side of the mouth of the second above-named river, au Cuivre, and ascending the current of the Mississippi?" May that not mean any tract of land fronting on the Mississippi River and lying south of the Dardenne, without giving any depth?

A. Yes, sir.

Q. May not the other tract mean any tract of land fronting on the Mississippi 60 arpents, and adjoining the Cuivre River, without giving any depth?

Yes, sir.

293 Q. What is the meaning of this language: "The depth of the three different above-described tracts of land to be extended by two lines starting from the banks of the Mississippi—one from the most southern and the other from the most northern point of the front of the above-named tracks, which two lines shall be run parallel on each side in a westerly direction until they reach the top of the high hills in the rear; and from there the said two lines be continued and prolonged in the same westerly direction until they reach a point at a distance of about 200 arpents from the foot of said hills, and then these two extreme points shall be connected together by a straight line, which shall be run so as to form the fourth side of the three tracts then above denominated?" I will ask you if this last description does not fix the Mississippi as the front of that tract.

A. Yes, sir.

Q. And the back line of the tract to be 200 arpents west of the foot of the hills?

A. Yes, sir.

Q. Have you any idea that can mean anything else than to fix the front and back lines of that tract?

A. No, sir.

Q. Now I will ask you if, in your opinion as a surveyor, all that is necessary to the location of a tract does not end with the descrip-

294 tion that I have read of the three tracts of land as to the front and back lines?

A. Yes, sir; it only gives the two defined lines; the two others are undefined.

By counsel for the complainants:

Q. These words: "The said lines encompassing in their extent all the waters of the above-mentioned rivers, La Charette, alias Dardenne, and au Cuivre," not being then a part of the description you consider?

A. I was stating that they were the only lines. I said that was the end of the description of lines.

By Mr. EMMONS, counsel for the United States:

Q. I will ask you in regard to this last clause: "The said lines encompassing in their extent all the waters of the above-mentioned rivers, La Charette, alias Dardenne, and au Cuivre, in order that hereafter the petitioner may erect saw and grist mills thereon, and place there a number of cattle, have slaughter-houses, and send meat to the capital"—I will ask you, as a surveyor, if you would not consider that rather as an inducement to the making of the grant than as a description of the boundaries?

A. It is more a statement of what he intends to do with the land and water-power than it is a description.

295 WEDNESDAY, *June 21st*, 1876.

The cross-examination of Mr. Pitzman was resumed as follows:

By the counsel for the complainants:

Q. With reference to the plan J, you have testified that the yellow lines thereon represent one theory of the location by means of parallel lines?

A. Yes, sir.

Q. You would draw the parallel lines due west from the termini of the front?

A. Yes, sir; from the points marked B and H.

Q. Carrying the upper line to a point supposed to be 200 arpents west from the first hills, and the lower line also 200 arpents west from said hills?

A. Yes, sir.

Q. You would then unite the termini of these two side lines by a third straight line, would you not?

A. Yes, sir.

Q. After leaving the point, would not the first 6 or 7 miles of the lower line run up the Mississippi River?

A. Yes, sir.

Q. Possibly crossing the river?

A. Yes, sir; it would probably touch the main shore of Illinois.

Q. Would not such a line enter the central grants about the middle of the front of the three grants?

A. Yes, sir, it would.

Q. Wouldn't it strike the land about half-way between the
296 mouths of the Cuivre and the Dardenne?

A. Yes, sir.

Q. Would the tract of land embraced by such yellow lines include any portion of the waters of the Dardenne River?

A. It would not.

Q. How far would be the nearest part of said tract from the nearest part of the Dardenne?

A. From four to five miles.

Q. Could Clamorgan then have built a mill upon said tract of land which also would have been upon the Dardenne or any of the waters thereof?

A. No, sir; not if you locate it as represented by the lines painted yellow.

Q. Are you personally acquainted with the character of that country?

A. With the general character I am.

Q. Do you think it possible for Clamorgan to have built a water mill upon any portion of the Cuivre River embraced within said yellow lines?

A. I think he could. It depends entirely upon what kind of a mill you build.

Q. I mean old-fashioned water mills or dams.

A. Well, if you have enough water power you need not carry the water over the top of the wheel; that is only necessary where the water power is limited, or where the volume of water is limited.

Q. Would it have been possible for Clamorgan to have made a
297 mill-dam across the Cuivre within said tract?

A. I could not determine that without running a line of levels over it. You cannot tell in alluvial ground how much fall a river may have for a distance of 12 miles.

Q. Has the river any considerable fall within the bounds of said tract?

A. I could not tell; I am not familiar enough with the land from the river to that point to answer the question.

Q. Do you know of any mill sites on the portion of the river Cuivre embraced within the said yellow lines?

A. No, sir; I do not.

Q. Do you think there are any favorable mill sites?

A. As I stated before, I am not familiar enough; I only crossed that river going up from St. Charles or Lincoln County.

Q. Wouldn't the lower line of said tract run due west from the lower terminus of the front cross the Cuivre River at the bend, as shown in the southwest corner of the tract?

A. It would either touch it or cross it; it could not be accurately ascertained without a survey.

Q. Does it not appear by the plan J that it would cross it?

A. Yes, sir.

Q. Does it not also appear by the plan H very clearly that a line
298 drawn due west from the lower terminus of the front would cross the Cuivre?

A. Yes, sir.

Q. Would said yellow tract on plan J encompass all the waters of the Cuivre?

A. It would within its boundaries.

Q. Do you not mean by that that it would receive all the waters of the Cuivre?

A. Yes, sir.

Q. Wouldn't a 10 acres tract, surveyed on each side of the Cuivre at its mouth, receive them in the same sense?

A. Yes, sir.

Q. You mean by that, then, that the waters of the Cuivre would empty into the said yellow tract?

A. Yes, sir.

Q. With reference to the plan J and the tract thereon represented in red lines, it has been constructed upon the theory of running waiving lines from the termini of the front up the Dardenne and Cuivre 60 arpents from each, and parallel to said streams throughout their meander, has it not?

A. No, not precisely 60 arpents; the southeastern line of the tract has been started at the point H, 60 arpents below the mouth of the Dardenne, and the line is then extended in a southwesterly direction, parallel to the Dardenne. The northern line starts at the point
299 B, on the bank of the Mississippi, 60 arpents above the Cuivre, and is run in a westerly direction parallel to the Cuivre River.

Q. The back line is intended to be a direct line drawn generally parallel with the first hills, 200 arpents from the same, and limiting the said waving lines drawn on the north of the Cuivre and south of the Dardenne, is it not?

A. Yes, sir.

Q. Can you say that the tract thus bounded by the red lines would encompass all the waters of the Dardenne and Cuivre?

A. It would within the boundaries of the tract, to the extent of the boundaries of the tract of land thus established.

Q. Wouldn't a strip of land 10 acres wide, running along the Mississippi River the whole extent of the front, encompass all the waters of the said rivers in the same sense?

A. It would.

Q. You mean, then, that said tract bounded by red lines receive all the waters of the two rivers, do you not?

A. Yes, sir.

Q. In the same sense in which the hypothetical tract of 10 acres width would receive them?

A. Yes, sir.

Q. Would that mode of enclosing all the waters of said rivers be such a mode as would enable Clamorgan to build mills upon all of said
300 waters, monopolise all of the mill *seats* thereon, all the timber supply therein, control both banks of said streams and their logging facilities?

A. It would not include all the mill sites along both rivers.

By Mr. EMMONS, counsel for defendant:

Q. You mean from the mouths to the sources of the rivers?

A. Yes, sir.

Counsel for complainant resuming:

Q. From your knowledge of the rivers, are not valuable mill sites, for water-mills, such as were supposed to be employed in 1797, more apt to be found in the small streams and narrow channels afforded by upper parts and upper valleys of said rivers?

A. I do not know what people supposed at that time, but I do suppose that the people would select mill sites nearest the mouth of the Mississippi; at that time as near as they could get a good site.

Q. Would they be as apt to find favorable mill sites in the lower parts of the streams as the upper parts?

A. As I stated before, I do not think that could be ascertained without a very careful examination of the river-bed for the first 12 miles. There might be fall enough to give splendid mill sites within 12 miles from the mouth of the Cuivre or Dardenne, but I am not familiar
301 enough with the country to know it.

Q. Can you swear from your personal knowledge that the etching on plan H faithfully represents the situation of the first hills along the whole front of the Clamorgan grants?

A. No, sir; as I stated before, it has been taken from the public maps of St. Charles, Warren, and Lincoln County, and I only know approximately the location of the bluffs or high hills west of the Mississippi River.

Q. Have you measured a line from the river out to said bluffs along any part of said front?

A. I never did.

Q. May not these bluffs be one or two miles farther from or nearer to the river than represented upon said plan H?

A. They may be, for all I know.

Q. What do you understand the expression "about 200 arpents" to mean, in surveying parlance, in reference to Spanish grants?

A. About 200 arpents would be limited probably by the enclosure, if the land was actually occupied. If it was a tract of land without a natural boundary the word "about" would be simply superfluous and would not be considered at all by surveyors.

302 Q. You would consider it an indefinite expression?

A. No, not indefinite; but I consider it as having no meaning at all unless the line is terminated by a natural monument.

Q. What distance is 200 lineal arpents in miles?

A. Seven miles and three-tenths.

Q. Would 10 miles, therefore, be about 200 arpents, or would 5 miles be about 200 arpents?

A. It depends entirely whether there is a natural monument at either end of the line called for in description; about 200 arpents or about 5 miles means either 200 arpents or 5 miles unless a positive call is made for a natural monument.

Q. And so with reference to the 10 miles?

A. Yes, sir.

Q. (By Mr. EMMONS, counsel for the government.) You mean about 10 miles would be about 10 miles?

A. Yes, sir.

Q. (By counsel for the complainant.) If the call had been to run to a well-known natural bound about 200 arpents from the foot of the hills, and you identified said bound at 10 miles, would you regard that as complying with the call?

A. Yes, sir.

Q. If you found said bound at 5 miles would you regard that as answering the call?

A. I would unquestionably.

303 Q. In your profession, then, it is an established principle of field surveys, wherever discretion is given you, to adhere to well-known natural boundaries and monuments in the location of Spanish grants, to the prejudice of theoretical courses and distances where there is an irreconcilable conflict between them?

A. If the call for natural monument is positive, and they can be properly identified, courses and distances have to give way and we conform to the natural monuments as described in the grants or deeds in Spanish surveys as well as in any other surveys based upon deeds made recently; but when we are not positive about the monuments called for, the courses and distances called for in the grant, or in the deed, assist us in identifying and determining whether the monuments are the ones referred to in the deed or grant.

Q. With reference to the plan K the waving dotted red line thereon is intended to start from the upper and lower termini of the front on the Mississippi and be so run as to be generally 60 arpents from the Cuivre and Dardenne and to skirt along generally 60 arpents from the head springs, forming all the streams and tributaries of said rivers so as to embrace the entire valleys of said streams and encompass all the

304 waters of the same, do they not?

A. They do.

Q. Would the tract of land so circumscribed encompass all the waters of said rivers?

A. It would.

Q. Would it give Clamorgan the monopoly of all the mill seats he might find in all of said waters, control of all the timber supply thereon, control of all the banks of all of said tributaries and of the main streams?

A. Yes, sir; it would take it all in.

Q. Would it give him a control of such privileges to a greater extent than any of the other plans as to which you have testified?

A. It would.

Q. What do you understand these words of Clamorgan's petition to mean: "The tract of land bounded on one side by the little river called La Charette, alias Dardenne, and on the other by the little river called Au Cuivre; one on the south, the other on the north, will serve as boundaries to those two sides," taken in connection with this language of Carondelet's confirmation: "The tract of land situated between the two rivers Charette and Cuivre, both emptying into the Mississippi, which serve to determine the situation of said land having the Mississippi in front."

A. It would include all the land situated between the main stream

of the Dardenne & the main stream of the Cuivre River, if
305 that was the entire description.

Q. How would said tract be bounded to the westward or in the rear?

A. Probably by the dividing ridge leading from the head waters of the main stream of the Cuivre River to the head-waters of the Dardenne River.

Q. Would it not according to custom be bounded by a right line drawn from the head spring of one to the head spring of the other?

A. I don't think so, because another stream may set in between the two rivers. These streams run in an eastwardly direction. They are 18 to 20 miles apart. There may be another stream setting in a short distance back of the Mississippi River running in a westerly direction, and it could not be so construed as to include the head-waters of another stream. I think it would be bounded by a line following the dividing ridge.

Q. No other streams intervening between the head-waters of the Dardenne and of the Cuivre you would limit the central grant, then, by a right line drawn from the head spring of one to the head spring of the other?

A. If it was a level prairie, which is not the case, I would.

Q. What do you understand this language of Clamorgan's petition to mean: "The petitioner wishes, moreover, that you would be pleased
306 to grant him 60 arpents of land in front on the banks of the Mississippi, immediately adjoining the mouth of the first above-named river, La Charette, in descending the current of the Mississippi, and again 60 arpents in front also on the banks of the Mississippi adjoining immediately to the upper side of the mouth of the second above named river Au Cuivre and ascending the current of the Mississippi," when taken in connection with this language of the ratification: "Also 60 arpents to the north and 60 arpents to the south of said rivers, which serve to determine the situation of said land having the Mississippi in front"?

A. In connection with the last mentioned quotation, I would consider it means a tract 60 arpents in width, the southern line of which would be ran a distance of 60 arpents right angularly from the Dardenne, and parallel thereto; and the other tract of land would be bounded by a line 60 arpents north and parallel to the Cuivre River.

Q. You mean said tracts would be 60 arpents in width extending the whole length of said rivers?

A. Yes, sir; to the extent of the main stream.

Q. From their mouths to their sources along their main branches?

307 A. So far as the river is known by the same name.

Q. Supposing, then, you were instructed to survey and locate the lands granted to Clamorgan, and your guides were his petition, the concession, and decree of confirmation, and the references to courses and distances as employed for defining the depth of said tracts were stricken out or had never been inserted, would you have any doubts as to how locate said lands?

A. Yes, sir; I would have very serious doubts.

Q. Please state them and the nature of them.

A. For instance, if one of the main branches of the Cuivre River designated as the north fork of the Cuivre River on plan H, or the south fork of the Cuivre River on the same plan were known at the time by these names, I would probably consider the point where the north fork

and the south fork of the Cuivre River united the nort'west corner of the Clamorgan tract.

Q. Please state your other doubts; how would you locate the south-west corner?

A. I would not know precisely to what point to run to the Dardenne River, unless there were very strong springs right at the head of said stream which furnished the main supply of the Dardenne.

308 Q. Supposing to there be such, would you run the back line to such spring?

A. Yes, sir; if the river was named from these springs—the Dardenne River, I would.

Q. If the source, then, of the Dardenne was capable of plain identification, it would resolve all doubt as to where to start the back line, in what direction?

A. Yes, sir.

Q. Your doubt about where to run such line to from said source of the Dardenne would result then from the doubt as to the true source of the Cuivre?

A. No, sir; I don't think there is any question about that at all. Supposing in place of being called the south fork and the north fork of the river Cuivre, they had assumed entirely different names, in that case there could be no question as to the extent of the claim.

Q. We are talking about facts, maps, and the names of streams, about which we are fully agreed. There are no assumptions in the case. We therefore ask you if, guided by the preceeding language referred to in the petition of Clamorgan, the concession and decree of confirmation, bereft of all reference to course and distance as the mode of fixing the back line, with no question open as to the main springs of the

309 Dardenne and Cuivre, we ask you how you would locate the three tracts granted to Clamorgan?

A. I would start at the main spring of the Dardenne and run in a northern direction to the place where the south fork and the north fork of the Cuivre unite, and I would add thereto a tract of land 60 arpents in width north of the Cuivre River, and a tract 60 arpents in width south of the Dardenne.

Q. Why would you not run said back line to the head-waters of the Cuivre River?

A. As I stated before, because the rivers are known by different names. From said point where the north fork and south fork unite, they form from that point only the Cuivre River.

Q. Supposing there was no question that the north fork was the principal stream, and there was no question as to the identification of its main spring or source, where would you then run said line?

A. I would not go beyond the point where the river changes its name.

Q. Supposing that the south fork were the main fork, and there was no question about it, and no doubt as to the identification of its source or main spring, how would you then run the line from the head-waters of the Dardenne?

A. As I stated before, I would never go beyond the point where

310 the river changes its name.

Q. You would not then limit the central tract by a line drawn from the head-waters of the Cuivre to the head-waters of the Dardenne?

A. No, sir; I would not, unless it was called the Cuivre River up to its head-waters.

Redirect examination by Mr. EMMONS, counsel for the United States:

Q. And in locating these lines in the manner in which you have just stated, would you not depart from the initial points; the courses and distances, and the monuments of the high hills, you would leave them all out, in locating, would you not?

A. Yes, sir.

Q. In starting off you have to abandon initial points, courses, and distances, and the calls which are given there—the high hills?

A. Yes, sir.

Q. How would you run a curved line, starting at a distance 60 arpents from the mouth of the Cuivre and running to the source 60 arpents, terminating at a distance 60 arpents from the source?

A. I would first run a line following the center of the Cuivre River, then measure 60 arpents along the Mississippi and run the other line parallel.

Q. Would you do that by a curved line or by a succession of
311 straight lines, giving the courses and distances of each line?

A. It would be a succession of straight lines, giving the course and distance of each line.

Q. Then there would not be a curved line in it, would there?

A. No, sir.

Q. Is there any such thing known as a curved line in making a survey?

A. No, sir; not in making surveys for boundaries.

Q. That is what we are talking about?

A. No, sir; not in general surveying. We locate rivers, and lines parallel to the rivers, by making short straight lines.

Q. Did you ever know a Spanish or any other grant, the calls for which were to start at any distance from a creek or small river emptying into a large river, following that river parallel from the mouth to the source?

A. I never saw a grant or plat of a Spanish survey having a boundary line parallel to a river. I have seen a great many parallel to the general course of a river.

Q. In any of those lines which are run meandering, following the course of the river, do you take the curve of the river, or one straight line, and another straight line following along in succession?

A. We take short straight lines for the purpose of being able
312 to make calculations, because, not being regular, we could not calculate the quantity otherwise.

Q. Well, you could not make a calculation well by a curved line, could you?

A. No, sir; not where there is a great many lines.

Q. There would be a great many radial points, would there?

A. Yes, sir.

Q. Which are not known in making surveys?

A. No, sir.

Q. Do you know anything of the character of this soil; the land through which this Cuivre River runs for several miles above its source?

A. Yes, sir.

Q. Would you not consider these high hills that are referred to, the first hills that are referred to back of the Mississippi, as permanent a call and monument as the river?

A. Unquestionably I would.

Q. You have never known any change to take place in the location of those hills?

A. No, sir; I don't think any surveyor could be doubtful as to that point of description.

Q. Could any definite survey then be made of this land mentioned in the petition, following all the calls that are specified in it?

A. No, sir; you can't make a survey of the tract without violating some of the calls.

Q. Can a survey be made of the land regarding what has been
313 called here the concession by Carondelet, without regarding the no-parallel lines, or, in other words, when you speak of two parallel lines, don't you mean two lines parallel to each other?

A. Yes, sir; it means two lines parallel to each other.

Q. How could you make that survey, according to the direction given there, without having lines parallel to each other?

A. Permit me to read; it says: "Two parallel lines are to be drawn, running into the interior of the country until they reach a distance of 200 arpents beyond the foot of the first hills, conformably to the solicitation of the parties interested." Taking that sentence, it unquestionably means two lines parallel to each other, running in a westerly direction.

Q. After you get your starting-point from the high hills or foot of the first hills, where do you stop at?

A. I would end at a point 200 arpents west of the foot of the hills; all the other descriptions call for the top of the hills.

Q. From the reading of this petition, and the concession and confirmation, do you suppose that Mr. Clamorgan, Governor Trudeau, and the Baron of Carondelet had any correct idea of the geography of the country?

314 A. No, sir; because otherwise they would have made a different description.

Q. Well, when you undertake to make a survey from particulars, calls, boundaries, &c., do you, or not, undertake to gather from them the idea of the parties?

A. We do.

Q. That is, from any document that undertakes to give the monuments of title?

A. We always attempt to establish the lines of the tract of land according to the intention of the parties as expressed in the written document.

Q. Well, can the intent of parties in locating a tract of land be gathered very well from parties who have never been over the land, and have not much knowledge of the geography of the country?

A. No, sir.

Q. Then if you were called upon to make an original survey, if you had been the surveyor mentioned in this document, and finding such conflict of monuments, boundaries, locations, initial points, &c., what would you do?

A. I would have started at the point B & H.

Q. I mean now to draw these parallel lines to conform to that survey in every particular.

A. Well, there are different descriptions.

Q. But to recognize all of these, what would you have done?

A. I would have first to decide which is the leading descrip-
315 tion, which is the description under which I would have to make the survey. If I had nothing before me except the petition of Clamorgan of March 1st, 1797, I would establish the line in conformity to the theory represented by lines shaded red on plan J. If I had to

establish the line according to the ratification of Baron de Carondelet, I would have no doubt as to establishing the western boundaries of the tract; but I would be very doubtful how to establish the southern or northern boundary of the tract, as I could not run lines parallel to each other to include the Dardenne and Cuivre River, as the starting points on the river are fixed by the description.

Q. Then, with all these conflicts before you, conflict of lines, boundaries, initial points, courses, and distances, what would a surveyor naturally do; could he make a survey at all, or report to his superior officers?

A. No, sir; I would not attempt to make a survey under those circumstances; I would simply report that the parties themselves had to establish the lines by compromise; that I was unable to establish the lines in accordance with the calls of the documents.

Q. Well, in the condition in which that country was at that
316 time, the want of knowledge in regard to the geography and topography of this whole country around here, would it be possible to separate the tract of land specified in this petition from the mass of the public domain definitely, without an actual survey?

A. No, sir; it would not definitely.

Re-direct examination by counsel for complainants:

Q. Your opinion is, from the examination of the muniments of title, that Clamorgan and the Spanish authorities were greatly mistaken as to the geography and topography of that country up there, you say?

A. I say they had no exact knowledge of the topography of the land.

Q. Why do you think they had no exact knowledge of the topography and geography of the country?

A. Because otherwise they would have made a more definite description.

Q. Do you mean that the conflict of the calls for course and distance with the definition of natural boundaries is so irreconcilable from the present known condition of that country as to lead you to infer that Clamorgan and the authorities were not acquainted with the true state of affairs?

A. Reading the description, I presume it was the idea that the
317 two rivers ran parallel to each other approximately so that the lines drawn from the points H & B on plan J in a westerly direction to points 200 arpents west of the hills would encompass both the Dardenne and the Cuivre River.

Q. Encompass all the waters, do you mean?

A. No; the Cuivre River and the Dardenne to the extent of the boundaries.

Q. You think the object, then, was to embrace the valleys of the two streams as far back as the back line, wherever that might be located?

A. No, sir; I think so as to show on the part of Clamorgan that he did not want to claim a totally unknown quantity of land or a quantity of land which could not be approximately obtained. He stopped at a point 200 arpents west of the foot of the bluffs of the Mississippi.

Q. On the other hand, you think it was not his object, then, to embrace the valleys of both streams as far as the back line might happen to be?

A. I think it was his intent to include the Dardenne and Cuivre River and 60 arpents on each side of it to the extent of a line 200 arpents west of the bluffs or of the high hills.

318 Q. The tracts represented on plan J by yellow and red lines and on plan I by red lines are predicated upon the supposed situation of the foot of the hills with reference to the Mississippi River, and

with refference to the intersection of the said lines represented on such plan with said hills?

A. Yes, sir; they are.

Q. The accuracy, then, of the theories of location represented by said three plans depends upon the accuracy with which said hills have been represented on plan H, and further upon the supposition that these hills are the hills intended by Clamorgan and the Spanish authorities?

A. Entirely so.

Q. If, therefore, said hills so represented on plan H are not thereon truly represented, or if, being truly represented, said hills are not identical with the ones referred to by Clamorgan and the Spanish authorities, then the theories of location represented by said plans J and I are all wrong, are they not?

A. They would in that case; they would so far as the western or back line would be concerned.

Q. Do you understand that in the ratification or confirmation by Carondelet of the grants to Clamorgan, he limits said grants to the rear in any manner?

319 A. Yes, sir; it is limited to a point 200 arpents beyond the foot of the first hills of the Mississippi.

By Mr. EMMONS, counsel for the United States:

Q. From the whole reading of the Clamorgan petition would you not suppose he intended to ask for a grant of land, the upper and lower boundaries of which were to be parallel lines drawn from the upper and lower terminus of the fronts running westerly to points 200 arpents beyond the hills, the back line to be drawn from the termini of said side lines, having the Mississippi in front for the fourth side?

A. Yes, sir; I think that was the intention of the authorities.

Q. (By counsel for complainants.) Do you not think Clamorgan supposed said track would encompass all the waters of the Dardenne and Cuivre?

A. Yes, sir; I think he supposed the two rivers to be closer together or to be more nearly parallel to each other than they are in fact, and that the parallel lines run in a westerly direction from points H and B in plan J run parallel to each other would include both rivers.

Q. (By Mr. EMMONS, counsel for the United States.) And is not that one of the reasons why you think they knew very little about the geography and topography of the country?

A. Yes, sir.

320 Q. Well, then, if they were so much mistaken, could they give any very accurate boundaries of the tract of land so as to separate it from the mass of the public domain?

A. Yes; I think they could give a more accurate description than they have given, even if they had a very superficial knowledge of the topography of the land.

Q. I will ask you if all this does not make an actual survey the more necessary?

A. Yes, sir.

321 1°. A. Monsieur Mr. Dr. Zenon, lieutenant de gouverneur de la Haute Louisiane:

Rien ne fut plus glorieux pour le supliant que l'industrie et l'émulation que vous encourageates en lui pour la découverte des nations sauvages, qui s'étendent jusqu'à la mer Pacifique, chargé de cette mission par le gouvernement général, vous daignates faire espérer au supliant l'honneur de votre protection et de votre appui, vous fites plus encore, vous

sollicitates du gouverneur général les secours que réclamait le supliant pour poursuive avec chaleur une entreprise de la quelle Sa Majesté paraissait elle-même s'occuper. En effet elle accorda au supliant un privilège exclusif de commerce pour dix années entières avec les nations du Haut Missouri, non seulement pour ouvrir une nouvelle branche dans les peleteries, mais encore pour prendre des renseignements et des connaissances sur la localité du territoire immense que l'on aurait à parcourir, toutes ces démarches, mons'r, ne se sont faites qu'avec des grands sacrifices chez les nations sauvages pour se concilier leur estime et leur attachement envers nous; sur vos recommandations, Mons'r, Son Excellence Mr. le Baron de Carondelet instruisit Sa Majesté des frais excessifs auxquels le supliant était contraint de subvenir dans cette épineuse entreprise pour faciliter une communication plus éloignée; alors les bontés de Sa Majesté déterminèrent en faveur du supliant qu'il
322 lui serait compté annuellement une somme de dix mille piastres pour contribuer au suport des frais occasionés par la découverte des nations et territoires du Haut Missouri, de même que pour éloigner les étrangers de la Baie d' Hudson et du Lac Supérieur, qui y transportent une portion de leur commerce pour suborner les crédules nations qui y habitent. Son excellence Mr. le Baron de Carondelet ainsi que vous, Mr., communicates de suite par des lettres officielles la générosité de Sa Majesté en faveur du supliant, mais le résultat fut sans aucun effet par les entraves que posa Mr. l'intendan Morales qui prétendit pour lors n'avoir dans les caisses du Roy aucuns fonds destinés à cet employ; dans cette crise de contradiction entre les deux pouvoirs le supliant demeura victime de son zèle et de son activité à se rendre utile aux désirs du gouvernement général et aux intentions de Sa Majesté. C'est dans cette circomstance malheureuse que le supliant ose réclamer vos bontés pour qu'il vous plaise de lui accorder sur le côté occidental du Fleuve Mississipi à quelques lieues audessus de l'entrée de la rivière Missouri, l'espace et portion de terre qui se trouve situé et borné d'un côté par la petite rivière nommeé la Charette dite Dardene, et de l'autre côté bornée par la petite rivére nommée la rivière au Cuivre, lesquelles vuident leurs eaux, l'une et l'autre, dans le Fleuve Micissipi, qui servira lui-même de bornes dans la dépendance de l'est pour un côté de la terre demandée. Les deux
323 susdites rivières nommées la Charette dite Dardene etle Cuivre, l'une dans la dépendance du Sud, l'autre dans la dépendance du Nord, serviront de bornes aux deux côtés. Le suplian désire de plus qu'il vous plaise lui accorder soixante arpens de terre de front sur le bord du Micissipi, tenant à l'entrée de la première rivière nommée la Charete mentionée cy-dessus en descendant le courant du Micissipi et en outre soixante arpents de terre de front également sur le bord du Micissipi tenant au dessus de l'entrée de la seconde rivière nommée cy-dessus la rivière au Cuivre, en remontan le courant du Micissipi, dirigeant et étendant la profondeur des trois différentes portions de terre mentionées cy-devant par deux lignes qui devront partir des bords du Micissipi, l'une dans la partie la plus sud, l'autre dans la partie la plus nord, des sus dites terres demandées que l'on prolongera paralellement sur chaque côté en avançan dans la dépendance du Oest jusqu'à ce qu'elles soient l'une et l'autre rendues sur les grandes côtés qui sont dans la profondeur à environ deux cents arpens de distance de leurs pieds par une ligne droite qui sera prolongée et s'avancera dans la même dépendance du Ouest, où alors étant arrivé et parvenu ces deux points d'extremités seront réunis par une autre ligne droite qui sera tirée pour former le quatrième côté des susdites trois portions de terre cy-dessus demandées; le tout en conservant dans l'enceinte des dites lignes de

prolongation, toutes les cause de la susdite rivière nommée la
324 Charette dite la Dardene et celle de la susdite rivière nommée la rivière au Cuivre, afin qu'à l'avenir le supliant puisse y établir des moulins à scie et à farine et même d'y placer une quantité d'animaux pour y établir des vacheries et des corails pour exporter des salaisons à la capitale et le supliant rendra graces à vos bontès.

St. Louis ce premier Mars 1797.

JE. CLAMORGAN.

OFFICE OF THE UNITED STATES RECORDER OF LAND TITLES,
St. Louis, July 18th, 1873.

This is to certify that the foregoing is a true copy or extract from pages 314 and 315 of a book marked Record-book D, which book is up to this day preserved on file in this office.

STILLMAN O. FISH, *Recorder.*

OFFICE OF U. S. RECORDER OF LAND TITLES,
St. Louis, June 3d, 1876.

I, Stillman O. Fish, recorder of land titles for the State of Missouri, hereby certify as a supplement to my above certificate of July 18, 1873, that the above and foregoing is a true & correct copy of the request of Clamorgan for a grant of land of date March 1st, 1797, as the same is recorded in record-book D, pp. 314 & 315, of the records of the old board of land commissioners appointed under the act of Congress of March 2d, 1805, now in my custody.

STILLMAN O. FISH,
U. S. Recorder.

325 To Don Zenon Trudeau, lieutenant-governor of Upper Louisiana:

Nothing has made the petitioner so proud as the encouragement and emulation you have given to his industry, for the purpose of accomplishing the discovery of the Indian nations extending themselves to the Pacific Ocean. The petitioner being charged with that mission by the general government, you condescended to give him hopes that he would have the honor of your protection and support; you did more, you solicited from the general government the aid claimed by the petitioner, in order to proceed with vigor in an enterprise of which His Majesty himself appeared to be occupied. Infact His Majesty granted to the petitioner an exclusive privilege for trading ten whole years with the nations of Upper Missouri, not only in order to open a new branch of commerce in furs, but also to get information about, and topographical knowledge of, the immense territory which was to be explored. Those objects could not be obtained but by making great sacrifices among the Indian nations, in order to conciliate to us their esteeme and friendship. In consequence of your recommendations, sir, his excellency the Baron de Carondelet laid before His Majesty an account
326 of the excessive expenses to which the petitioner had been subjected in this arduous enterprise of facilitating communications then so extensive. His Majesty in his goodness determined, in favor of the petitioner, that a sum of ten thousand dollars should be paid annually to him, in order to contribute to the expenses occasioned by the discovery of the nations and the territories of Upper Missouri, as also in keeping away foreigners who, from Hudson's Bay and Lake Superior, transported their goods in order to bribe the credulous nations inhabiting the said Upper Missouri. His excellency the Baron de Carondelet,

as well as you, sir, communicated immediately, by official letters, to the petitioner the generosity of His Majesty in his favor; but it had not its intended effect, on account of the impediments thrown in the way by the intendant Morales, who pretended at the time to have in the King's coffers no funds appropriated to that object. In consequence of that state of contradiction between the two powers, the petitioner has remained a victim of his zeal and activity in rendering himself useful in compliance to the wishes of the general government and to the intentions of His Majesty.

In these unfortunate circumstances the petitioner presumes to claim of your goodness that you will be pleased to grant to him, on the
327 western side of the river Mississippi, some leagues above the mouth of the Missouri, the tract of land bounded on one side by the little river called La Charette, alias Dardenne, and on the other by the little river called Au Cuivre; one on the south, the other on the north, will serve as boundaries to those two sides.

The petitioner wishes, moreover, that you would be pleased to grant to him sixty arpens of land in front on the banks of the Mississippi, immediately adjoining the mouth of the first above-named river, La Charette, in descending the current of the Mississippi; and again sixty arpens in front, also on the banks of the Mississippi, adjoining immediately to the upper side of the mouth of the second above named river, Au Cuivre, and ascending the current of the Mississippi. The depth of the three different above described tracts of land to be extended by two lines starting from the banks of the Mississippi, one from the most northern point (of the front) of the above demanded tracts, which two lines shall be run parallel on each side, in a westwardly direction, until they reach the top of the high hills in the rear, and from there the said two lines to be continued and prolonged in the same westwardly direction until they reach a point at the distance of about two hun-
328 dred arpens from the foot of said hills; and then those two extreme points shall be connected together by a straight line, which shall be run so as to form the fourth side of the said three tracts here above demanded. The said lines encompassing in their extent all the waters of the above-mentioned rivers, La Charette, alias Dardenne, and Au Cuivre, in order that, hereafter, the petitioner may erect saw and grist mills thereon, also place there a number of cattle, have slaughter-houses, and send salt meat to the capital. And the petitioner shall render thanks to your goodness.

J. CLAMORGAN.

ST. LOUIS, *March 1st*, 1797.

329 Dn. Zenon Trudeau, capitan del regimto. de la Luisiana, teniente coronel graduato y teniente de governador de la partida occidental de Illinois.

Visto le expuesto por Dn. Santiago Clamorgan y lo particular que me esta recomendado por el Sor. Govor. General Baron Carondelet de facitan y proteger la descuvierta y comercio del alto Misury, á que se ha empeñado á mi solicitad el citado Dn. Santiago Clamorgan, considerando los astrasos que le ha ocasiona esta empresa, los meros gastos á que deve contribuen en el mismo empeño y lo importante de favorecer y fomentar la clienvierla citado, sin perjudicar al Re. Hexano nya los interesos y bien de estas establecimientos, en les bien contribuen á su properidad clamando meros pobladeres, por estas consideraciones y las de haverse el expresado Dn. Santiago Clamorgan hecho acreedor y devienento á las gracias del govierno, el agrimensor de esta juridicion (luego

que las occupaciones de su empleo se lo permitten) apeara, en favor del interesado referido, el espacio de tiens que solicita, del mismo mode y manera que lo esplica el presente escrito, que con el proceso verbal, de aper y linderos que se le fixaxa formaxa, el titulo de concession que en tiempo opostumo devera presentar al govierno general de lo provincia, para ser aprobacion y registro.

Formar vale S. Luis de Illinois, tres de marzo de mil setecientos noventa y siete.

ZENON TRUDEAU.

330 Recorded (in book No. 3, pages twenty one, two, three, four, five, and twenty-six, No. 14) the year one thousand eight hundred and six, January nine.

ANTOINE SOULARD,
Surveyor G'al T'y Louis'a.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, July 25th, 1873.

This is to certify that the foregoing has been truly and correctly copied or extracted from page 315 of a book marked Record Book D, which book is up to this day preserved on file in this office.

STILLMAN O. FISH,
Recorder.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, June 3d, 1876.

I, Stillman O. Fish, recorder of land titles for the State of Missouri, hereby certify as a supplement to my above certificate of July 25th, 1873, that the above is a true & correct copy of the concession by Zenon Trudeau to Clamorgan of date March 3d, 1797, as the same is recorded in record book D, page 315 of the records of the old board of land commissioners appointed under the act of Congress of March 2d, 1805, now in my custody.

STILLMAN O. FISH,
U. S. Recorder.

331 Don Zenon Trudeau, captain in the regiment of Louisiana, lieutenant-colonel by brevet, and lieutenant-governor of the western part of Illinois.

Cognizance being taken of the statement made by Don Santyago Clamorgan, and the governor-general, the Baron de Carondelet, having particularly recommended to me to facilitate and protect the discovery and commerce of Upper Missouri, in which the above-named Clamorgan has engaged at my entreaties; considering the losses which said enterprise has occasioned to him, and the new expenses to which he shall have to contribute on account of the same undertaking and how important it is to favor and extend the discoveries herebefore mentioned, without prejudice to the royal treasury, and to the interest and welfare of those settlements, but, on the contrary, in contributing to their prosperity by drawing new inhabitants: For these considerations, and on account of the said Clamorgan having rendered himself worthy and deserving of the favors of the government, the surveyor of this jurisdiction (as soon as the occupations of his place will permit) shall survey, in favor of the party interested, the extend of land he solicits, in the way and manner described in the foregoing document, which, together with the plat and certificate of survey and of the boundaries which shall be

set (to said land), will form the title of concession, which, in due
332 time, he shall have to lay before the general government of the province in order to get its approbation and record.

ZENON TRUDEAU.

ST. LOUIS, *March* 3, 1797.

333 2. Con fha. de cinco de Avril de presente año me dice el Sor. Governador Genexal Baron Carondelet lo siguiente:

" Vte. leido el oficio de V. M. de 11 de Marzo ultimo pasado en que me espose los motivos que le mevado á conceder en Dn. Santiago Clamorgan la porcion de tierra que existe entre los dos rios Charette y O Cuivre que desaguan en el Mississipi, asi que secenta arpanes en la parte mai norte y secenta arpanes al sur de dho. rios qe. se deven tomar por puestos y el Mississipi por trente, se due tiras dos lineas paralelas para covrer en lo enterior del pays hasta llegan dos cientos arpanes á dentro del pied de las primeras cuestas y tal que me dice V. M. haverlo solicitado el interesado, todo quanto es de mi aprovacion por haver Clamorgan merecido esta gracia del govierno."

Lo que haus enviro á V. M. para su conveniento y govierno.

Dios gur. an. m. ms. St. Luis 3 de Julio de 1797.

ZENON TRUDEAU.

Por Dn. SANTIAGO CLAMORGAN.

Recorded (in book No. 3, pages twenty-one, No. 13) two January, the year one thousand eight hundred and six.

ANTOINE SOULARD,
Surveyor G'al, Ty Louis'a.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, July 25th, 1873.

This is to certify that the above is a true and correct copy or extract from page 315 of a book marked "Record-book D," which book is up to this day preserved on file in this office.

STILLMAN O. FISH,
Recorder.

334 OFFICE OF U. S. RECORDER OF LAND TITLES,
St. Louis, Mo., June 3, 1876.

I, Stillman O. Fish, recorder of land titles for the State of Missouri, hereby certify as a supplement to my above certificate of July 25th, 1873, that the above and foregoing is a true & correct copy of a letter from Trudeau containing the confirmation of concession by the Baron de Carondelet of date the 5th of April, 1797, as the same is recorded in Record Book D, page 315, of the records of the old board of land commissioners appointed under the act of Congress of March 2d, 1805, now in my custody.

STILLMAN O. FISH,
U. S. Recorder.

335 ST. LOUIS, *July* 3, 1797.

Under date of April 5th of this current year, the governor-general, Baron de Carondelet, writes to me as follows:

" I have read your official note dated the 11th of last March, in which you state the motives which have induced you to grant to Mr. Clamorgan the tract of land situated between the two rivers Charette and Cuivre, both emptying into the Mississip'i; also sixty arpens to the

que las occupaciones de su empleo se lo permitten) apeara, en favor del interesado referido, el espacio de tiens que solicita, del mismo mode y manera que lo esplica el presente escrito, que con el proceso verbal, de aper y linderos que se le fixaxa formaxa, el titulo de concession que en tiempo opostumo devera presentar al govierno general de lo provincia, para ser aprobacion y registro.

Formar vale S. Luis de Illinois, tres de marzo de mil setecientos noventa y siete.

ZENON TRUDEAU.

330 Recorded (in book No. 3, pages twenty one, two, three, four, five, and twenty-six, No. 14) the year one thousand eight hundred and six, January nine.

ANTOINE SOULARD,
Surveyor G'al T'y Louis'a.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, July 25th, 1873.

This is to certify that the foregoing has been truly and correctly copied or extracted from page 315 of a book marked Record Book D, which book is up to this day preserved on file in this office.

STILLMAN O. FISH,
Recorder.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, June 3d, 1876.

I, Stillman O. Fish, recorder of land titles for the State of Missouri, hereby certify as a supplement to my above certificate of July 25th, 1873, that the above is a true & correct copy of the concession by Zenon Trudeau to Clamorgan of date March 3d, 1797, as the same is recorded in record book D, page 315 of the records of the old board of land commissioners appointed under the act of Congress of March 2d, 1805, now in my custody.

STILLMAN O. FISH,
U. S. Recorder.

331 Don Zenon Trudeau, captain in the regiment of Louisiana, lieutenant-colonel by brevet, and lieutenant-governor of the western part of Illinois.

Cognizance being taken of the statement made by Don Santyago Clamorgan, and the governor-general, the Baron de Carondelet, having particularly recommended to me to facilitate and protect the discovery and commerce of Upper Missouri, in which the above-named Clamorgan has engaged at my entreaties; considering the losses which said enterprise has occasioned to him, and the new expenses to which he shall have to contribute on account of the same undertaking and how important it is to favor and extend the discoveries herebefore mentioned, without prejudice to the royal treasury, and to the interest and welfare of those settlements, but, on the contrary, in contributing to their prosperity by drawing new inhabitants: For these considerations, and on account of the said Clamorgan having rendered himself worthy and deserving of the favors of the government, the surveyor of this jurisdiction (as soon as the occupations of his place will permit) shall survey, in favor of the party interested, the extend of land he solicits, in the way and manner described in the foregoing document, which, together with the plat and certificate of survey and of the boundaries which shall be

set (to said land), will form the title of concession, which, in due
332 time, he shall have to lay before the general government of the province in order to get its approbation and record.

ZENON TRUDEAU.

ST. LOUIS, *March* 3, 1797.

333 2. Con fha. de cinco de Avril de presente año me dice el Sor. Governador Genexal Baron Carondelet lo siguiente:

" Vte. leido el oficio de V. M. de 11 de Marzo ultimo pasado en que me espose los motivos que le mevado á conceder en Dn. Santiago Clamorgan la porcion de tierra que existe entre los dos rios Charette y O Cuivre que desaguan en el Mississipi, asi que secenta arpanes en la parte mai norte y secenta arpanes al sur de dho. rios qe. se deven tomar por puestos y el Mississipi por trente, se due tiras dos lineas paralelas para covrer en lo enterior del pays hasta llegan dos cientos arpanes á dentro del pied de las primeras cuestas y tal que me dice V. M. haverlo solicitado el interesado, todo quanto es de mi aprovacion por haver Clamorgan merecido esta gracia del govierno."

Lo que hans eniro á V. M. para su conveniento y govierno.

Dios gur. an. m. ms. St. Luis 3 de Julio de 1797.

ZENON TRUDEAU.

Por Dn. SANTIAGO CLAMORGAN.

Recorded (in book No. 3, pages twenty-one, No. 13) two January, the year one thousand eight hundred and six.

ANTOINE SOULARD,
Surveyor G'al, T'y Louis'a.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, July 25th, 1873.

This is to certify that the above is a true and correct copy or extract from page 315 of a book marked "Record-book D," which book is up to this day preserved on file in this office.

STILLMAN O. FISH,
Recorder.

334 OFFICE OF U. S. RECORDER OF LAND TITLES,
St. Louis, Mo., June 3, 1876.

I, Stillman O. Fish, recorder of land titles for the State of Missouri, hereby certify as a supplement to my above certificate of July 25th, 1873, that the above and foregoing is a true & correct copy of a letter from Trudeau containing the confirmation of concession by the Baron de Carondelet of date the 5th of April, 1797, as the same is recorded in Record Book D, page 315, of the records of the old board of land commissioners appointed under the act of Congress of March 2d, 1805, now in my custody.

STILLMAN O. FISH,
U. S. Recorder.

335 ST. LOUIS, *July* 3, 1797.

Under date of April 5th of this current year, the governor-general, Baron de Carondelet, writes to me as follows:

" I have read your official note dated the 11th of last March, in which you state the motives which have induced you to grant to Mr. Clamorgan the tract of land situated between the two rivers Charette and Cuivre, both emptying into the Mississip'i; also sixty arpens to the

que las occupaciones de su empleo se lo permitten) apeara, en favor del interesado referido, el espacio de tiens que solicita, del mismo mode y manera que lo esplica el presente escrito, que con el proceso verbal, de aper y linderos que se le fixaxa formaxa, el titulo de concession que en tiempo opostumo devera presentar al govierno general de lo provincia, para ser aprobacion y registro.

Formar vale S. Luis de Illinois, tres de marzo de mil setecientos noventa y siete.

ZENON TRUDEAU.

330 Recorded (in book No. 3, pages twenty one, two, three, four, five, and twenty-six, No. 14) the year one thousand eight hundred and six, January nine.

ANTOINE SOULARD,
Surveyor Gal T'y Louis'a.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, July 25th, 1873.

This is to certify that the foregoing has been truly and correctly copied or extracted from page 315 of a book marked Record Book D, which book is up to this day preserved on file in this office.

STILLMAN O. FISH,
Recorder.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, June 3d, 1876.

I, Stillman O. Fish, recorder of land titles for the State of Missouri, hereby certify as a supplement to my above certificate of July 25th, 1873, that the above is a true & correct copy of the concession by Zenon Trudeau to Clamorgan of date March 3d, 1797, as the same is recorded in record book D, page 315 of the records of the old board of land commissioners appointed under the act of Congress of March 2d, 1805, now in my custody.

STILLMAN O. FISH,
U. S. Recorder.

331 Don Zenon Trudeau, captain in the regiment of Louisiana, lieutenant-colonel by brevet, and lieutenant-governor of the western part of Illinois.

Cognizance being taken of the statement made by Don Santyago Clamorgan, and the governor-general, the Baron de Carondelet, having particularly recommended to me to facilitate and protect the discovery and commerce of Upper Missouri, in which the above-named Clamorgan has engaged at my entreaties; considering the losses which said enterprise has occasioned to him, and the new expenses to which he shall have to contribute on account of the same undertaking and how important it is to favor and extend the discoveries herebefore mentioned, without prejudice to the royal treasury, and to the interest and welfare of those settlements, but, on the contrary, in contributing to their prosperity by drawing new inhabitants: For these considerations, and on account of the said Clamorgan having rendered himself worthy and deserving of the favors of the government, the surveyor of this jurisdiction (as soon as the occupations of his place will permit) shall survey, in favor of the party interested, the extend of land he solicits, in the way and manner described in the foregoing document, which, together with the plat and certificate of survey and of the boundaries which shall be

set (to said land), will form the title of concession, which, in due
332 time, he shall have to lay before the general government of the province in order to get its approbation and record.

ZENON TRUDEAU.

ST. LOUIS, *March* 3, 1797.

333 2. Con fha. de cinco de Avril de presente año me dice el Sor. Governador Genexal Baron Carondelet lo siguiente:

" Vte. leido el oficio de V. M. de 11 de Marzo ultimo pasado en que me espose los motivos que le mevado á conceder en Dn. Santiago Clamorgan la porcion de tierra que existe entre los dos rios Charette y O Cuivre que desaguan en el Mississipi, asi que secenta arpanes en la parte mai norte y secenta arpanes al sur de dho. rios qe. se deven tomar por puestos y el Mississipi por trente, se due tiras dos lineas paralelas para covrer en lo enterior del pays hasta llegan dos cientos arpanes á dentro del pied de las primeras cuestas y tal que me dice V. M. haverlo solicitado el interesado, todo quanto es de mi aprovacion por haver Clamorgan merecido esta gracia del govierno."

Lo que hans enviro á V. M. para su conveniento y govierno.

Dios gur. an. m. ms. St. Luis 3 de Julio de 1797.

ZENON TRUDEAU.

Por Dn. SANTIAGO CLAMORGAN.

Recorded (in book No. 3, pages twenty-one, No. 13) two January, the year one thousand eight hundred and six.

ANTOINE SOULARD,
Surveyor G'al, T'y Louis'a.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, July 25th, 1873.

This is to certify that the above is a true and correct copy or extract from page 315 of a book marked "Record-book D," which book is up to this day preserved on file in this office.

STILLMAN O. FISH,
Recorder.

334 OFFICE OF U. S. RECORDER OF LAND TITLES,
St. Louis, Mo., June 3, 1876.

I, Stillman O. Fish, recorder of land titles for the State of Missouri, hereby certify as a supplement to my above certificate of July 25th, 1873, that the above and foregoing is a true & correct copy of a letter from Trudeau containing the confirmation of concession by the Baron de Carondelet of date the 5th of April, 1797, as the same is recorded in Record Book D, page 315, of the records of the old board of land commissioners appointed under the act of Congress of March 2d, 1805, now in my custody.

STILLMAN O. FISH,
U. S. Recorder.

335 ST. LOUIS, *July* 3, 1797.

Under date of April 5th of this current year, the governor-general, Baron de Carondelet, writes to me as follows:

" I have read your official note dated the 11th of last March, in which you state the motives which have induced you to grant to Mr. Clamorgan the tract of land situated between the two rivers Charette and Cuivre, both emptying into the Mississip'i; also sixty arpens to the

north and sixty arpens to the south of said rivers, which serve to determine the situation of said land, having the Mississip'i in front. Two parallel lines are to be drawn running in the interior of the country until they reach at the distance of two hundred arpens beyond the foot of the first hills comformably to the solicitation of the party interested. All which I do approve, Clamorgan having deserved this favor from the government."

I transmit the same to you for your knowledge and government.

May God have you in his keeping many years.

ZENON TRUDEAU.

For DON SANTYAGO CLAMORGAN.

336 HENRY CLAMORGAN, being first duly sworn, on his oath states as follows:

The accompanying plan or exhibit marked E represents, to the best of my knowledge, belief and information, as included within the Mississip'i River to the eastward and to the northward, westward & southward, within the heavy green lines A, B, C, D, E, F, G, H, I, & J, all the lands, private claims, &c., supposed to be covered by the three tracts or land claims granted to Don Jacques Clamorgan by the lieutenant-governor, Zenon Trudeau, on the 3d of March, 1797, & confirmed by the Baron de Carondelet on the 5th April, in the same year, according to the surveys of the United States as represented on said plan. That the said lands are situated in townships 46, 47, 48, & 49 north of ranges 1, 2, 3, 4, & 5 east of the 5th principal meridien in the State of Missouri, in the counties of Lincoln and Saint Charles, the main grant being situated between the rivers Cuiver & Dardenne and the two smaller grants being contiguous thereto, & being 60 arpens on each side of two rivers, all fronting on the Mississip'i River and extending back two hundred arpens from the foot of the bluffs or first hills according to the calls of the titles.

HENRY CLAMORGAN.

Subscribed & sworn to by said affiant before me, at office, in St. Louis, Mo., this 28th day of July, A. D. 1873.

F. A. WERNER,
Comm'r U. S. Circuit Court, Eastern District of Missouri.

337 Here insert Plan E, of case 2225 (Clamorgan vs. U. S.).

338 Also Plan F.

339 Also Plan E, of case 2673 (H. T. Blow et al. vs. U. S.).

340 To the recorder of land claims for the Territory of Louisiana:

Take notice:

Jacques Clamorgan réclame une concession de terre contenant cinq cent mille arpents bornée comme il suit: Tout l'espace de terre qui se trouve entre les rivières à Dardenne et la rivière au Cuivre sur le Mississipi faisant à l'est les bornes, plus soixante arpens de terre de front sur le Mississipi tenant à l'entrée de la rivière Chorette ou Dordenne et devant le dit fleuve, plus soixante arpens de terre de front sur le Mississipi tenant au dessus de l'entrée de la rivière au Cuivre est remontant le dit fleuve, dirigeant et étendant la profondeur des trois différentes portions de terrés mentionnées ci-dessus par deux lignes qui devront partir des bords du Mississipi, l'une dans la partie la plus sud et

l'autre dans la partie la plus nord des susdites terres que l'on prolongera parallèlement sur chaque cetè en avancant dans la dépendance de l'ouest, jusqu'à ce qu'elles soient l'une et l'autre rendus sur les grandes côtes qui sont dans la profondeur a environ deux cents arpents de distance de leur pied, où alors étant arrivés et parvenus en deux points déterminés, seront réunis par une autre ligne droite qui sera tirée
341 pour former le quatrième côté des susdites trois portions de terre ci dessus, &c., en vertu d'une concession qui lui a été concédés par le Lieutenant Gouverneur du Zenon Trudeau le 3 de mars de mille sept cent quatre vingt dix sept.

Jacques Clamorgan, as assignee of Pre. Bochan, claim 800 arpents of land, situated on the river à la Juque, district of St. Charles, by virtue of S. Pe. Beaucham having cultivated and inhabited the same prior and on the 20th of the month of December, 1803, by permission from the proper hispanish officer, and under the act of Congress.

St. Louis, the 27th of June, 1808.

For JQ. CLAMORGAN.
LS. LABEAUME.

OFFICE OF THE UNITED STATES RECORDER
OF LAND TITLES,
St. Louis, July 18th, 1873.

This is to certify that the foregoing is a true copy or extract from page 314 of a book marked Record Book D, which book is, up to this day, preserved on file in this office.

STILLMAN O. FISH,
Recorder.

342 To the recorder of land claims for the Territory of Louisiana:

Take notice:

Jacques Clamorgan claims one grant of land containing five hundred thousand arpens, bounded as follows: All the space of land existing between the rivers Dardennes & Copper, on the Mississip'i, which is the eastern boundary; also sixty arpens of front on the Mississip'i, at the mouth of the Charette or Dardenne River, and ahead of said river; also sixty arpens of land of front on the Mississip'i above the mouth of the Copper River, and going up the aforesaid river, directing and extending the depth of the three aforesaid parcels of land by two para'lell lines, both starting from the Mississip'i shores, one from the southernmost point, the other from the northernmost point of said land, running these lines on both sides westwardly until they reach on top the high bluffs which are backwards, about two hundred arpens distance from their base, which points being then reached and determined shall then be united by a line straight to form the fourth side of the aforesaid three parcels of lands, by virtue of a concession granted by Lieutenant Governor Dn. Zenon Trudeau, the third of March, seventeen hundred and ninety-seven.

343 THURSDAY, *November 14th*, 1811.

Board met.

Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commission'rs.

Jacques Clamorgan, claiming five hundred thousand arpens of land situated on rivers Mississip'i, Dardenne et Cuivre, district of St. Charles, produces a concession from Zenon Trudeau, L. G., dated 3d March,

1797; also four letters to claimant from Zenon Trudeau, Juan Ventura Morales and Baron de Carondelet.

It is the opinion of the board that this claim ought not to be confirmed.

Jacque Clamorgan claiming sixty arpens front on Mississip'i, Chorette and Dardenne back to the hills, about two hundred arpens district of St. Charles, produces same concession and papers as in the preceeding claim.

It is the opinion of the board that the claim ought not to be confirmed.

Jacque Clamorgan, claiming sixty arpens of land front on the Mississip'i, commencing above the mouth of Cuivre, up the Mississip'i
344 and back to the hills, produces same concession and papers as in the foregoing claim.

It is the opinion of the board that this claim ought not to be confirmed.

Board adjourned till Tuesday next, nine o'clock a. m.

(Signed) JOHN B. C. LUCAS.
(Signed) CLEMENT B. PENROSE.
(Signed) FREDERICK BATES.

OFFICE OF U. S. RECORDER OF LAND TITLES,
Saint Louis, Mo., June 10th, 1876.

I, Stillman O. Fisch, recorder of land titles in the State of Missouri, do hereby certify that the above & foregoing is a true & correct copy from the minutes of the old board of commissioners appointed under the act of March 2nd, 1805, as the same now appears on file of record in my office.

STILLMAN O. FISH,
Recorder.

345 NEW ORLEANS, *May 26th*, 1794.

I have read, sir, with much interest, the memorial you have addressed to me. It contains political views which do honor to your understanding, and are in accordance with the ideas I have laid before the court two years ago. We are perhaps very near the moment when we shall see them realised, but time and pains are needed to convince the ministers of their utility. The grand objects which for the present absorb all the attention of the different powers, will perhaps delay for some months the approbation of this plan, but I do not despair to see it adopted before the end of the year.

Some errors have crept in among your details which the enthusiasm for what is good, and too full conviction of your own ideas, have hidden from you, but, in the main, they are just, and the means of execution well combined.

I have the honor to be, with the most perfect consideration, sir, your very humble and very obedient servant,

LE BARON DE CARONDELET.

MONS. CLAMORGAN.

346 NEW ORLEANS, *July* 22, 1794.

SIR: I have indeed received the political memorial you directed me under the double cover which you mention. The letter annexed to it for Mr. Delassus was also received at the same time, and suspecting some mistake, and also conjecturing what might be the contents of it, I threw it into the fire.

I have already had the honor to tell you my sentiments on one part of the contents of your memorial, which I have read with the greatest

interest. Let us wait till the storm which agitates the political atmosphere be somewhat dissipated, and then we shall see what the future situation of Europe will permit us to do for the welfare of Louisiana, which, I hope, will advance more in the last five years of this century than it has done ever since the beginning of it, up to the period of my coming into the province.

Your views, sir, are in perfect accordance with mine. True wealth is to be found only in agriculture, and this requires a competent population and easy outlets. Louisiana is susceptible of all these advantages, but present circumstances are not favorable to our views. Let us then have *have* patience for awhile, and, by remaining attentive spec-
347 tators of passing events, we may seize on the first opportunity of success.

I have the honor to be, with the most perfect consideration, sir, your very humble and very obedient servant,

LE BARON DE CARONDELET.

Mons. DE CLAMORGAN.

348 NEW ORLEANS, *May* 11, 1796.

SIR: *En* consequence of what you wrote to me in your letter of 10th April, I send to Mr. Trudeau some medals for the company, and among them a very fine gilt one, which I intend for the great Moka chief, in order to flatter him most. I also send several commissions, leaving a blank for the names, so that Mr. Trudeau may have them filled up; but it is to be wished, as much for the company as for the King, that there should be but one single chief decorated with a great medal, one with a small one, and two captains in each nation; fore hereafter those chiefs will require compensations adequate to their grades. I send also fine flags by Mr. Chouteau, and when, in execution of the treaty concluded with the United States, we shall abandon the bluffs, the commandant will send to Mr. Trudeau ten swivels for the service of the company's forts.

Mr. Chouteau is also bearer of a commission, such as you desired for Mr. Mackay.

Finally, I send to Mr. Trudeau the order that Mr. Todd may take an interest in the company of discoveries.

There is no objections to Mr. Todd having the exclusive trade of the Sac and Fox nations in the country east of the Missouri, and even
349 on the said Missouri, during the term of his contract, but it would not be proper to have it extended to the western side before we positively know and are perfectly acquainted with the force and situation of the nations situated on the (last) above mentioned side of said river. Besides, I must avoid to have those nations at variance with the Osages, whom Messrs. Chouteau are beginning to keep in subjection, and who will be an impediment to the aggrandisement of our settlements as long as we cannot keep them in peace.

I am concerned to see that our settlers of Upper Mississippi, who might acquire true wealth by agriculture, prefer to devote themselves to the fur trade, which is as dangerous as it is precarious. The working of the lead mines would also afford great profits, because we might furnish the Havana with this article, and yet we are constantly destitute of it, for want of labor; at this moment there is none, either in the King's or in private warehouses.

I have the honor to be, with the most perfect consideration, sir, your very humble and very obedient servant,

LE BARON DE CARONDELET.

Mons. DE CLAMORGAN.

350 NEW ORLEANS, *July* 9, 1796.

SIR: I have received the account of Mr. Mackay's travel to the Moka nation, as also his instructions given to the party going to the discovery of the South Sea. I would be so much the more flattered should this last (expedition) succeed, as it is confidently reported that a Spanish squadron has sailed from Europe in order to go and dislodge the English from Nootka Sound, and it would be a curious fact if our people were to reach the same point at the same time.

I thought I had written to you that the establishment of a fort at the river St. Peter had already been proposed to the court, which is occupying itself of the means required to put Louisiana in a respectable state of defence; but time is needed, for everything remains yet to be done, and the political circumstances of Europe attract all the attention.

I have the honor to be, with the most perfect consideration, sir, your very humble and very obedient servant,

LE BARON DE CARONDELET.

MONS. DE CLAMORGAN.

351 NOUVELLE ORLÉANS, *a* 18 *7bre*, 1796.

Je viens de recevoir, Monsieur, l'agréable nouvelle de l'approbation de la compagnie Espagnole (ce sont les propres termes de la cédule royale depeschée dans le concil d'etat tenu le 27 May dernier) formée en 1794 pour faire des découvertes à l'ouest du Missouri, avec les règlements et instructions d'après lesquels votre seigneurie l'a permise et lui a accordé le privilège exclusif de la traite avec toutes les nations indiennes du même Missoury qui habitent au delà de la nation Ponca, offrent trois mille piastres de récompense à celui qui arrivera le premier jusqu'à la mer du Sud.

2°. La permission accordeé à la dite comp^ie de pouvoir armer et entretenir armés dans les forts qu'elle a et aura dors en avant les cent hommes au compte de sa Majesté qu'elle juge nécessaires; le tout sous les ordres de V. Seig^ie et à les fins assignéés, ce que vous veillerez avec le plus grand soin, &^a.

J'espère, Monsieur, que d'après ces graces et privilèges la comp^ie reprendra une nouvelle vigueur et fera les plus grands efforts pour correspondre aux intentions de sa Majesté et exclure les Anglais de ces parages.

La maison de Todd est également approuvée par le Roy, qui a joint à toutes ces grâces celles de la réduction des impots du quinze au six pour cent pour toute la colonie.

352 Nous verrons si Leglise gagnera les 3,000 piastres.

J'ai l'honneur d'être, avec la plus parfaite consideration, Monsieur, votre très humble et très obéissant serviteur,

LE BARON DE CARONDELET.

Monsieur DE CLAMORGAN.

OFFICE OF THE UNITED STATES RECORDER OF LAND TITLES,
St. Louis, July 18th, 1873.

This is to certify that the foregoing is a true copy or extract from page 316 of a book marked "Record book D," which book is up to this day preserved on file in this office.

STILLMAN O. FISH, *Recorder*.

OFFICE OF U. S. RECORDER OF LAND TITLES,
St. Louis, Mo., June 3d, 1876.

I, Stillman O. Fish, recorder of land titles for the State of Missouri, hereby certify, as a supplement to my above certificate of July 18th, 1873, that the above & foregoing is a true and correct copy of a letter from the Baron de Carondelet to Clamorgan, of date the 18th of September, 1796, as the same is recorded in Book D, page 316, of the records of the old board of land commissioners, appointed under the act of Congress of March 2d, 1805, now in my custody.

STILLMAN O. FISH,
U. S. Recorder.

353 NEW ORLEANS, *September 18th*, 1796.

SIR: I have just received the agreeable news of the approval of the "Spanish company formed in 1794 (these are the proper words of the royal decree made in the council of state, held on the 27th of last May") for the purpose of making discoveries to the westward of the Missouri, as also of the regulations and instructions under which your lordship has sanctioned and granted to the said company the exclusive privilege of the fur trade with all the nations of Indians on said Missouri who inhabit beyond the nation of Poncas, offering three thousand dollars as a reward for the first who will reach the South Sea.

2d. The permission granted to the said company to arm and maintain armed in the forts which it has or may have hereafter, at the expense of his majesty, the one hundred men who are thought to be necessary, the whole being under your lordship's orders for the end designated, which you will watch with the greatest care, &ª.

I hope, sir, that, in consequence of these favors and privileges, the company will derive new vigor, and will make the greatest efforts in order to correspond to the intentions of His Majesty, and exclude the English from those parts.

The house of Todd is also approved of by the king, who has added to all these favors that of the reduction of the duties from fifteen
354 to six per cent. for all the colony.

We will see if Leglise gets the prize of $3,000.

I have the honor to be, with the most perfect consideration, sir, your very humble and obedient servant,

LE BARON DE CARONDELET.

MONS. CLAMORGAN.

355 NEW ORLEANS, *October 26th*, 1796.

In a royal order, under date of 11th of June of this year, the most excellent S'or Don Diego de Gardoqui, secretary of state, and of the universal despache, &ª . . . among other things tells me the following:

"In the council of state held on the 27th of last month, extracts of your lordship's last letters, up to the 10th of February, were laid before the king, together with the topographical plat of the rivers Mississip'i and Missouri, on which are demonstrated the progresses of the Spanish company of discoveries to the westward of this last river established on the 12th of May, 1794, as also the encroachments of the English companies upon the Spanish possessions. His Majesty being well informed of all the occurrences in that province and of the means which your lordship has proposed, with the advice of the intendant and of the English merchand, Don Andrew Todd, of Michilimackinac, His Majesty

has condescended to grant, with the unanimous accordance of the said counsel, the following points and favors:

"1st. The approval of the Spanish company formed in 1794, for the purpose of making discoveries to the westward of the river Missouri, under the instructions and regulations with which your lordship
356 has permitted and granted to said company the exclusive privilege of the trade with all the nations of Indians on the said Missouri who inhabit beyond the nation of Poncas, offering a reward of $3,000 to the first who reached the South Sea.

"2d. The permission that the company may arm at its own expense, and maintain armed in the forts which said company has or may have hereafter, the one hundred men who are considered necessary, the whole to be under your lordship's orders for the purpose indicated, the accomplishment of which your lordship shall have to watch with the greatest care.

"3d. That all the duties on imports and exports shall be reduced for the present to six per cent., as your lordship and the intendant have proposed, both taking care, with the greatest exactness possible, to observe and lay before his majesty, at the end of the first year, the results which are expected from so munificent a disposition.

"Finally, that your lordship give to understand to all the magnitude of these concessions and the immense benefit which the sovereign munificence has condescended to accumulate in the treaty of amity, limits, and navigation; benefits which are of reciprocal utility to his beloved subjects, to the United States, and to the Indian nations allied
357 and friendly to the two contracting parties; and that your lordship shall so order that all the important objects which are expected from these dispositions shall be duly executed. All which I do communicate to your lordship by order of his majesty for your intelligence and for their execution."

I forward the same to you for your satisfaction and government.

May God have you in his keeping many years.

EL BARON DE CARONDELET.

S'or Don SANTYAGO CLAMORGAN.

358 NEW ORLEANS, *November 5th*, 1796.

Under date of the 3d instant the intendant of these provinces writes to me what follows:

"The meaning which I give to the article in the royal order of the 11th June of this year, upon which Don Santyago Clamorgan, director of the Spanish company of discoveries to the westward of the Missouri, has founded the demand which your lordship has been pleased to enclose in your official note of 31st ultimo, is that the cost of arming and the maintenance of the one hundred men whom the company wants for the forts it has or may have hereafter must be on its own account, and in this opinion, besides the literal interpretation of said article, to wit, the permission that the company may arm at its own expense and maintain armed, &c., I am moreover confirmed, 1st, by the circumstances of the permission of arming having ever been granted, for it appears to me that, had it been intended to be on the king's account, it would only have been necessary to notify that the one hundred men were to be furnished to the company; 2nd, by said royal orders not mentioning any sum, as it would have been indispensable in order to enable the royal treasury to make the disbursement; and, finally, by his majesty not having appropriated funds for this no small ex-
359 penditure, which cannot be supported by his royal coffers in this province, particularly in their present state of scarcity and em-

barrassment, without being deprived of the means necessary to maintain the troops, the civil officers, the squadron of galleys, the works at Pensacola, and other extraordinary contingencies which occur every day. In consequence of all this, I find myself under the obligation to oppose the delivery of the said sum of ten thousand dollars, and to beg of your lordship that, in case my reasons should not appear well-founded, to consult his majesty on this matter, and in order that, by his royal declaration, I shall be sheltered from the responsibility which would result to me were I to accede to the demand of Mr. Clamorgan on the terms he has established it."

I transmit the same to you for your knowledge and government.

May God have you in his keeping many years.

EL BARON DE CARONDELET.

S'or Don SANTYAGO CLAMORGAN.

360 No se me ofrice reparo en que V. M, sevante en el pais de Ylinaa los cien milicianos que S. M. acuerda para los fuertes de la compañia del Misuri, pero no puedo responder sobre el reemloblo de los diez mil p^{s} puerque esta depende de la decision de S. M. aunque estoy prenemente pmivajido (?) que en vista mi representacion asi lo mandara, puesque asi lo solicite y apaye cequento debo contestara a su oficio de V. M. sobre el particular con esta fecha. Dios une Sor. Gl. a Wm. Ms. as. Nueva Orleans, 8° de Noviembre de 1796.

EL BARON DE CARONDELET.

Sor. Dn. SANTIAGO CLAMORGAN.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, July 25th, 1873.

This is to certify that the above is correctly copied or extracted from pages 315 & 316 of a book marked Record-book D, which book is up to this day preserved on file in this office.

STILLMAN O. FISH, *Recorder.*

OFFICE OF U. S. RECORDER OF LAND TITLES,
St. Louis, Mo., June 3d, 1876.

I, Stillman O. Fish, U. S. recorder of land titles for the State
361 of Missouri, hereby certify as a supplement to my above certificate of July 25th, 1873, that the above & foregoing is a true & correct copy of a letter from the Baron de Carondelet to Clamorgan, of date 8th of November, 1796, as the same is recorded in book D, pages 315 & 316 of the records of the old board of land commissioners appointed under the act of Congress of March 2nd, 1805, now in my custody.

STILLMAN O. FISH,
U. S. Recorder.

362 NEW ORLEANS, *November 8th*, 1796.

I see no objection to your levying in the country of Illinois the one hundred militiamen, whom his majesty has granted for the forts of the Missouri company, but I cannot answer for the reimbursement of the ten thousand dollars, because it depends on his majesty's decision, although I am confident that when he sees my representation he will order it to be made, since I have solicited and supported the same.

It is all I have at present to answer to your official letter on this subject.

May God or Lord have you in his keeping many years.

EL BARON DE CARONDELET.

Sor Don SANTYAGO CLAMORGAN.

363 MONSIEUR: J'ai recu la lettre que vous m'adressées en date du 15 Avril dernier. La réclamation que vous faites est accompagnée des meilleures raisons possibles, et ne soufrirait aucune difficulté sans l'obligation où je me trouve de prendre toutes les suretés convenables à la responsabilité de ma place pour justifier de la manière la plus décisive l'emploi extraordinaire des fonds qui me sont confiés par S. M. En conséquence j'ai écrit à ce sujet à Mr. Dehault Delassus et sur la réponse catégorique qu'il me fera, j'ordonnerai ce qui me paraitra le plus convenable.

J'ai l'honneur d'être parfaitement, Monsieur, votre très humble et très obéissant serviteur.

Nouvelle Orléans, 24 Mai 1797.

JUAN VENTURA MORALES.

Mr. CLAMORGAN.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
St. Louis, July 18th, 1873.

This is to certify that the above is a true copy or extract from page 315 of a book marked Record-Book D, which book is up to this day preserved on file in this office.

STILLMAN O. FISH, *Recorder*.

OFFICE OF U. S. RECORDER OF LAND TITLES,
364 *St. Louis, Mo., Jane 3d*, 1876.

I, Stillman O. Fish, recorder of land titles for the State of Missouri, hereby certify as a supplement to my above certificate of July 18th, 1873, that the above & foregoing is a true & correct copy of a letter from the Baron de Carondelet to Clamorgan of date the 24th of May, 1797, as the same is recorded in book D, page 315 of the records of the old board of land commissioners appointed under the act of Congress of March 2nd, 1805, now in my custody.

STILLMAN O. FISH,
U. S. Recorder.

365 NEW ORLEANS, *May 24th*, 1797.

SIR: I have received the letter you directed to me under date of the 15th of last April.

Your claim is accompanied by the best reasons possible, and would not suffer any difficulties, were it not for the obligation I am under to take all the sureties necessary to the responsibility of my place in order to justify in the clearest manner the extraordinary use made of the funds confided to me by his majesty. Therefore I have written on this subject to Mr. Dehault Delassus, and according to the explicit answer which I expect of him I will order what shall appear to me most advisable.

I have the honor to be, sir, your very humble and very obedient servant,

JUAN VENTURA MORALES.

Mr. CLAMORGAN.

366 FRIDAY, *June 21st*, 1833.

The board met pursuant to adjournment.

Present, A. G. Harrison, F. R. Conway, commissioners.

James Clamorgan, by his legal representatives, claiming a tract of land on the Cuivre and Dardenne (quantity not ascertained). See record book D, page 314, Misso., No 5, page 417; record of concession No. 3, p. 21, No. 13. Produces in evidence seven letters, purporting to be original letters from Baron de Carondelet to James Clamorgan; also a certificate of James Mackay and one of Charles Sanguinet, both sworn to before a magistrate; also a paper purporting to be a translation from Spanish into French of a letter from Baron de Carondelet to Clamorgan, translated by M. P. Leduc and certified by him to have been so translated from the original letter in the proper handwriting of said Carondelet; also a paper purporting to be a receipt from Risdon H. Price for two original letters from Baron de Carondelet to James Clamorgan.

M. P. Leduc, duly sworn, says that the signatures to the seven
367 above-mentioned letters are in the proper handwriting of Baron de Carondelet, and that the translation here above produced is a faithful translation made by him from the original letter written in Spanish in the proper handwriting of said Baron de Carondelet.

L. E. Lawless, agent of claimant, being duly sworn, says that the two original letters described in the receipt were delivered by him to said R. H. Price on the day of the date of said receipt & signed by said Price. To the best of deponent's belief, the concession in this case as recorded was at same date in possession of said Price, and that said Price is at present out of this State. Deponent further thinks that said documents have remained in the possession of said Price and are now out of reach of the present claimant. Deponent further states that said Price obtained said documents for the purpose of laying the same before Congress, in order to obtain the confirmation of said claim.

Adjourned until to-morrow at 9 o'clock a. m.

(Signed) F. R. CONVAY.

368 SATURDAY, *June 29th*, 1833.

The board met pursuant to adjournment.

Present, L. F. Linn, F. R. Conway, commissioners.

In the case of James Clamorgan, claiming lands on Cuivre and Dardenn (see pages 179 and following), the following testimony was taken:

Paschal Cerré, being duly sworn, deposes and says that he was well acquainted with Charles Sanguinet, sen'or, who died some 12 or 15 years ago; that he was a man of probity and in every way to be relied on; likewise he was a man of considerable property. The deponent further states that he was acquainted with James Mackay, and that he was a man of respectability and property; that about forty years since Mackay made a voyage of discovery and trading up the Missouri River. The deponent knows the outfit was made at Clamorgan's house, and believes that Mackay was concerned and interested with Clamorgan in the enterprise.

Jesse Richardson, being duly sworn, says that he is 57 years of
369 age; that he has lived in the now State of Missouri and that vicinity since 1799. This deponent says he knew Jacques Clamorgan, deceased, and always understood among the old inhabitants of that country that the said Clamorgan had been in the employment of the Spanish Government, and that the Spanish Government was largely indebted to said Clamorgan, and that by way of remunerating said Clamorgan for his services and compensating him for what the govern-

ment owed him, large grants of land were made to said Clamorgan, particularly a large tract laying on the Mississippi and on the rivers Dardenne and Cuivre. This tract was looked upon by the old inhabitants under the Spanish Government as said Clamorgan's property. Deponent says he knew James Mackay; he was a man of probity and high standing under the Spanish Government. Charles Sanguinette, deceased, was a man of good reputation, and this affiant believes that the statement of said Mackay and Sanguinette are entitled to full credit, and statements which they made in relation to this claim or on any other subjects.

Question by commissioners. Do you know the quantity and boundaries of said tract?

370 Answer. I do not know the boundaries of said tract; I understood it was very large, embracing a great portion of the lands lying in the fork of the Missouri and Mississippi. And this affiant has always heard the people expressing their fears that this claim would be confirmed and deprive those settled on it of their possessions. This affiant understood the land was about 500,000 arpents; that it lay on the Mississippi, extending from above the mouth of the Cuivre to below the mouth of the Dardenne and back for quantity.

Question by commissioners. Did you ever hear of this claim spoken of as fraudulent?

Answer. Never; but on the contrary, and always understood that it was made to Clamorgan to pay him what the Spanish Government owed him as a reward for his services. I never heard any person who was interested against this claim pretend that it was fraudulent, or any person whatever.

Question by commissioners. Have you any interest in this claim?

Answer. No. I have feared that it would interfere with a claim

371 I have not confirmed, but on inquiry I believe there is no danger.

Board adjourned to Monday next at 9 o'clock a. m.

(Signed) F. R. CONWAY.

TUESDAY, *July* 16*th*, 1833.

The board met pursuant to adjournment.

Present, L. F. Linn, F. R. Conway, commissioners.

In the case of James Clamorgan, claiming land on Cuivre and Dardenne, see page 179 of this book.

Jean Eli Tholozau, being duly sworn, says that he believes it was about the year 1816 that he gave to Risdon H. Price the concession and all the papers he had in his possession relating to his claim, in order to have said claim presented to Congress for confirmation; that he has heard that said Price is now out of this State, and does not know where those papers are, and neither to whom to apply for them.

Adjourned until to-morrow at 9 o'clock a. m.

(Signed) L. F. LINN.

(Signed) F. R. CONWAY.

SATURDAY, *September* 26*th*, 1835.

The board met pursuant to adjournment.

Present, F. R. Conway, J. H. Relfe, F. H. Martin, commissioners.

372 In the case of James Clamorgan, claiming land on Dardenne & Cuivre, see book No. 6, page 179, & 234, & 205.

The board are unanimously of opinion that this claim ought not to

be confirmed, believing it to have been disregarded by both Trudeau, the lieutenant-governer who made the grant, and by his successor Delassus. For a full opinion and notice of interferences, see the report of the board to the Commissioners of the General Land Office.

The board adjourned until 30th inst.

(Signed) JAMES H. RELFE.
(Signed) F. R. CONWAY.
(Signed) F. H. MARTIN.

OFFICE OF U. S. RECORDER OF LAND TITLES,
Saint Louis, Mo., June 10th, 1876.

I, Stillman O. Fish, recorder of land titles for the State of Missouri, do certify that the above & foregoing contain a true & correct copy from the minutes of the board of commissioners appointed under the act of Congress of July 9th, 1832, relating to the claim of Jacques Clamorgan, now on file & of record in my office.

STILLMAN O. FISH, *Recorder*.

373 Je soussigné certifié par ces présentes: Qu'étant un des plus anciens habitans de cette ville, j'ai eu une parfaite connoissance de l'incorporation ainsi que des 'transactions de la Compagnie des Pelletries du Missouri sous l'administration du Gouverneur Trudeau, composée de Sieur Jacques Clamorgan et autres associés, et que j'étois à cette même époque dans le commerce avec les sauvages du bas Missouri et que mes opérations ont été tres genées par les privilèges accordés à la dite compagnie.

Il est aussi parfaitement connu de sous les anciens habitants de cette province, que le dit Sieur Clamorgan, par suite de la faillite de la susdite compagnie, provenant des dépenses conséquentes nécessaries pour conserver l'influence de la compagnie sur les nations sauvages ainsi que par le *déffaut* de payement d'une forte somme d'argent à eux due par le Gouvernement Espagnol, a reçu en échange des sus-dites prétentions et en leur lieu et place, plusieurs concessions de terre.

CH'LES SANGUINET.

TERRITORY OF MISSOURI,
County of St. Louis, ss:

Personally appeared before the undersigned, justice of the peace in and for the county of St. Louis, Territory of Missouri, the above
374 named Charles Sanguinet, who duly acknowledge the same, according to law, as being his signature for the purposes as therein set forth.

In witness whereof I have hereunto set my hand at St. Louis, the twentieth day of Dec'r, 1817.

J. V. GARNIER, *J. P.*

Frederick Bates, secretary of the Territory of Missouri, exercising the government, to all whom it may concern:

Be it known that J. V. Garnier was on 20th day of the present month, and that F. M. Guyol was on the 25th day of the present month, and that both of them at this time are justices of the peace within and for the county of St. Louis, Territory of Missouri, regularly commissioned. In testimony whereof I have hereunto affixed the seal of the Territory.

Given under my hand at St. Louis, the 26th day of Dec'r, A. D. 1817, and of the Independance of the United States the forty-second.

[SEAL.] FREDERICK BATES.

I, James Mackey, the undersigned, hereby certifies that I have perused deliberately certain documents in the hands of the trustees of the estate of the late Jacques Clamorgan, deceased, and compared them with the extracts (or copies) of the same from the commissioners of land titles records in the hands of Mess. Risdon H. Price & Fremon De-
375 lauriére, concerning a grant of land granted by the late Spanish authorities to a certain Jacques Clamorgan of the town of St. Louis, in Upper Louisiana, comprising a distance of sixty arpens below the river Charette (or Dardenne), the ancient name of said water course, and sixty arpens above the river Cuivre, the Mississip'i being the front of said land, the said instrument bearing date 1st March, 1797, and the decree thereto affixed dated third of March of same year; the signatures to each I am well acquainted with, and declare them to be genuine signatures of the said Clamorgan & Governor Trudeau; also a copy of a letter from the Baron de Carondelet to Governor Trudeau, & transmitted by the said Trudeau under his signature to the aforesaid Jacques Clamorgan, dated 3d July, 1797, which signature is genuine.

Also two signatures of the Baron de Carondelet to two communications to the said Clamorgan, dated 18th September and 8th November, 1796, in the handwriting of the said Baron de Carondelet. Also a communication from the intendant Juan Ventura Morales, dated 24th May, 1797, is the true signature and handwriting of the said Morales.
376 Having been myself for many years a Spanish officer, also a member of the Missouri Fur Company at the period alluded to, as well as in the habit of corresponding with the said officers and personally & intimately acquainted with them and their signatures, do therefore feel myself in point of knowledge of the facts contained in the said instruments, say the whole of the said signatures are in the handwriting of those persons who they purport to be.

Mr. Clamorgan was the principal director and representative of the Missouri Fur Company, as recognized in the king's royal s'hedule, and that the services and expenditures as stated in his petition were truly and faithfully performed by himself & said association, being myself the principal explorer & director of the said companie's affairs in the Indian country, and through my hands were distributed principally the presents of merchandise necessary to secure the friendship of the Indians to our establishments and to estrange them from the influence and traf'icing with the British Northwest and Hudson Bay Companies, to effect which very considerable sums were expended by and out of the funds of said company.

According to the stipulations contained in the Baron de Caron-
377 delet's letter of 18th September, 1796, those militia men where actually raised and distributed accordingly to the several forts or establishments of the said company, under a full expectation of receiving the promised compensation of ten thousand dollars therefor yearly. But the said sum, altho' demanded, was never paid, either by His Majesty or representative, to the said company. In consequence of which the said company were unable to support the aforesaid heavy annual expenditures, and was compelled to abandon the said privilege before the term of the ten years had expired. Mr. Jacques Clamorgan was on the dissolution of the Missouri Fur Company, fully authorized to solicit and obtain any remuneration which might be granded to him by His Majesty for the aforesaid services and expenditures, and as such it was always conceived he had obtained the aforesaid grant, which was supposed by the parties themselves & others to contain four hundred &

forty-seven thousand (arpens) two hundred arpens or thereabouts, according to the then exhibited conjectural plat.

St. Louis, 7th March, 1817.

JAMES MACKEY.

TERRITORY OF MISSOURY,
County of St. Louis, ss:

Personally appeared before the undersigned, justice of the peace
378 in and for the county of St. Louis, Territory of Missouri, the above-named James Mackey, who duly acknowledged the same, according to law, as being his signature, for the purposes therein set forth.

In witness whereof I have hereunto set my hand, at St. Louis, the 25th of December, 1817.

[SEAL.] F. M. GUYOL, *J. P.*

NOTE.—The authentication on accompanying papers. Frederick Bates exerc'g gov'r.

RECORDER'S OFFICE.
St. Louis, 17 *November*, 1851.

I certify that the foregoing is correctly copied from the original documents on file in this office.

ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

379 Sachent, tous ceux qui verront ces présentes, que moi, Jacques Clamorgan, demeurant en la ville de St. Louis, territoire de Missouri, pour prix en considération d'une terre située dans la provence du royaume de France, à moi cédée ce jourd'hui par une vante qui m'en a été passée, ainsi que pour une somme de cinq cents piastres argent des Etats Unis d'Amérique, qui m'ont eté bien et duement payé par le siéur Jean dit Tolozeau, demeurant actuellement sur la riviére de l'Eau Noire, conté de St. Geneviève, téritoire sus-dit, ainsi que je le reconnais par ces présentes, de tout quoi je le décharge pour avoir reçue le tout à ma satisfaction, j'ai ce jourd'hui vendue, cédé, quité et transporté, comme de fait je vend, cede, quitte et transporte au dit sieur Jean Elie Tolozau ses hoirs ou ayant causes une terre contenant quatre cent quarante-huit mille arpens en superficie, suivant le plan figuratif ci joint, située au lieu connu Charete ditte Dardene, et Cuivre, sur le Micissipi a environ vingt lieux de distance de la ville de St. Louis. Sur le côté ouest, à moi concédé par Mr. Don Zénon Trudeau, lieutenant gouverneur de la haute Louisiane, et en datte du trois du mois de Mars 1797, ratifiés et aprouvée par le seigneur Baron de Carondelet suivant son office en datte du cinq avril suivant, à moi transmis et communiqué ofi'cielement par le dit
380 sieur Zénon Trudeau le 3 du mois de juilliet, ainsi qu'il le paroit par les pièces originals régistré au bord des commissaires des terres, desquelles j'ai délivré copie au dit Jean Elie Tolozau pour les faires valoir, de même que les titres de M. le Baron de Carondelet, gouverneur de la N^e^ Orléans et celle de Mr. Morales, l'intendant, qui demontrent que la ditte concession à moi accordé est par forme de récompense pour une somme de dix mille piastres que le gouvernement devait me compter chaque année pendant l'espace de dix année pour l'entretiens de 100 miliciens que j'ai entretenue dans les forts d'une compagnie de commerce du Missouri dont j'étais le directeur, *promettant* promettant garantir la

susdite terre, circonstance et dépendance, pour moi et les miens, de toutes dettes, don, douaires et hypothèques, pour par le dit sieur Jean Elie Tolozau, ses hoir ou ayant causes, jouir, faire et disposer de la susditte terre, circonstance et dépendance, comme de choses à lu iapartenant et par lui bien légitimement acquis. En foi de quoi j'ai signé et scélé ces présentes en la ville de St. Louis, territoire du Missouri, ce vingtième jour du mois d'Octobre de l'année mil huit-cent-treize 1813.

J. CLAMORGAN. [SCÈL.]

COUNTY OF SAINTE GENEVIÉVE, *ss:*

Personally appeared before me, a justice of the peace in the county aforesaid, the above named Jacques Clamorgan, who duly acknowl-
381 edged that he signed, sealed, and delivered the above instrument for the purposes therein mentioned.

Given under my hand at Ste. Genevieve, the 25th day of October, 1813.

THO. OLIVER, *J. P.*

Recorded this 1st day of March, 1816.

WM. CHRISTY, JR.,
Ex-Officio Recorder.

STATE OF MISSOURI,
County of St. Charles, ss:

I, John K. McDearmon, clerk of the county court of St. Charles County, Missouri, and ex officio recorder for said county, certify that the foregoing is a true and correct copy of a deed from J. Clamorgan to Jean Elie Tolozan, and the acknowledgment and the date of filing, as the same now appears of record in my office in book C, page 382, and following.

In testimony whereof I have hereto set my hand and official seal this 9th day of July, 1873.

JNO. K. DEARMON,
Recorder.

382 Know all men who shall see these presents that I, Jacques Clamorgan, of the town of St. Louis, territory of Missouri, for the price and consideration of a tract of land situated in the province of the French Kingdom, to me ceded this day by a deed of sale to me delivered, also for a sum of five hundred dollars of lawful United States money, well and duly paid in my hands by Mr. Jean Elie Tholozau, presently living near the river of Black Water (Eau Noire), county of Ste. Genevieve and aforesaid territory, as I hereby acknowledge by the presents, of all which I discharge him, as having received all the above to my entire satisfaction, I have this day sold, ceded, quit-claimed, and transfer'ed, as I actually do cede, *cede*, quit-claim, and transfer, to the said Jean Elie Tholozau, his heirs or assignees, a tract of land containing four hundred and forty-eight thousand arpens in area according to explanatory maps hereto annexed, situated in the place named Charette, on Dardenne and Cuivre, on the Mississippi River, about tweny leagues distant from the town of St. Louis on the west side, to me conceded by Mr. Don Zenon Trudeau, lieutenant-governor of Upper Louisiana, dated on the 3rd day of March, 1797, confirmed and approved by the lord baron of Carondelet, by his right of office dated on the fifth of April following, to me transmitted and officially communicated by said
383 Mr. Zenon Trudeau on the third of the month of July, as it ap-

pears by the original documents recorded at the board of the commissioners of lands, of which documents I have delivered copies to the aforesaid Jean Elie Tolozau, for him to claim enforcement, as well as the titles, from Mr. the Baron of Carondelet, governor of New Orleans, and those of Mr. Morales, the intendant, which explain that the above concession to me granted is a manner of compensation for a sum of ten thousand dollars to me due yearly by the government for the term of ten years for the keeping up of one hundred militiamen that I kept up in the forts of a trading company in Missouri of which I was the director, promising to guarantee the aforesaid tract of land, including its circumstances and dependencies, for me and mine, from all debts, gifts, dowers, and mortgages, for the said Jean Elie Tholozau, his heirs, or assignees, enjoy, use, and dispose of said tract of land, with its circumstances and dependencies, as of things to him belonging and by him legitimately acquired.

In witness thereof I have signed and sealed the presents in the town of St. Louis, territory of Missouri, this twentieth day of the month of October, of the year one thousand eight hundred and thirteen (1813).

J. CLAMORGAN. [SEAL.]

384 COUNTY OF STE. GENEVIEVE, *ss:*

Personally appeared before me, a justice of the peace in the county aforesaid, the above-named Jacques Clamorgan, who duly acknowledged that he signed, sealed, and delivered the above instrument for the purposes therein mentioned.

Given under my hand at Ste. Genevieve the 25th day of October, 1813.

THO. OLIVER, *J. P.*

Recorded this 1st day of March, 1816.

WM. CHRISTY, JR.,
Ex-Officio Recorder.

STATE OF MISSOURI,
County of St. Charles, ss:

I, John K. Dearmon, clerk of the county court of St. Charles County, Missouri, and ex-officio recorder for said county, certify that the foregoing is a true and correct copy of a deed from J. Clamorgan to Jean Elie Tholozan, and the acknowledgment and the date of filing, as the same now appears of record in my office, in Book C, page 382, and following.

In testimony whereof I have hereto set my hand and official seal this 9th day of July, 1873.

JNO. K. M. DEARMON,
Recorder.

385 Sachent tous ceux qui verront ces présentes, que moi, Jean Elie Tholozau, demeurant dans la dépendance de comté de Ste. Geneviève, territoire du Missouri, pour prix et considération d'une somme de dix-huit cent piastres arg' des Etats Unis d'Amérique, qui m'ont été bien et dument payée par le sieur Jean Bt., Pelisier père, ainsi que je le reconnois par ces présentes de laquelle somme je donne pleine et entière quittance et décharge pour en être pleinement satisfait, j'ai cejourd'hui vendue, cédé, quitté, abandonnée et transporté, avec *les reserve* les reserves ci-après stipulées touts mes droits, noms, raisons et prétentions en faveur et pour le compte des nommés Ciprien Martial et Maximin,

l'un et l'aute fils naturels de Jacques Clamorgan et neveu du dit Pelissier, qui nous a déclaré avoir recu la sus-dite somme de la mère des dits Ciprien et Maximin longtems avaut sa mort, pour employer les dits fonds à une propriéte que l'conque qui serait acquise pour leur propre comptes, tout ainsi qu'il l'exécute en ce moment par les présentes, en divers terres dont le denombrement suit, savoir, une terre de quatre cent quarante huit mille arpents en superficie située sur le bord du Mississipy, et sur les rivères nommées Charet, Dardenne et Cuivre, à environ vingt lieux
de distance de la ville de St. Louis, la quelle moi Jean Elie Tho-
386 lozau déclare avoir acquise du St. Jacques Clamorgau, en datte du vingtieme jour du mois d'Octobre de la présente année à lui concédé par M'r D'n Zenon Trudeau, lieutenant-gouverneur de la Haute Louisiane, le 3 de Mars 1797, par ordre de son excellence le Baron de Carondelet. Une autre terre située sur le Mississipy à environ douze ou quinze lieues plus bas que la ville de la Nouvelle Madrid au lieu connu sous le nom de Pointe aux Alises, contenant la quantité de cinq cents trente six mille neuf cent quatre arpents en superficie, qui s'étendent des bords du fleuve en allant dans la profondeur jusqu'à la troisième branche de la rivière St. François, la quelle terre moi, J. E. Tholozau je déclare avoir acquise du St. Jacques Clamorgan par vente à moi passée le 1er, jour du mois d'Aouts de la présente année et à lui concédée le 9 Aout 1795, par le lieut. gouverneur de la Nouvelle Madrid. Troizièmentune autre terre située dans le Missouri à environs quatre cent lieux de cette ville, au lieu connu sous le nom de l'Isle au Cèdre, entre *entre* la rivière nommée le Vieux Anglois et celle nommée la Côte de Médecine, l'une et l'autre sur les bords opposés du Missouri où elles s'evident, la quelle terre moi, J. E. Tholozau je déclare avoir acquise du St. Jacques Clamorgan par vente à moi faite le même jour que la précedente, qui étoient le premier jour
du mois d'Aouts de la présente année concédé à Regis Hoisel le 21
387 Mars 1800, contenant quarante quatre mille huit cents arpents en superficie. Quatrièmement, une autre terre contenant huit mille arpents en superficie, située dans la rivière Maramech au lieu connu sous le nom de Pointe à Burel, à environs huit lieus de distance de cette ville, située sur la rivière Antarya, qui vide ses eaux dans le dit Maramech, la quelle terre moi, J. Elie Tholozau, je déclare avoir acquise de Jacques Clamorgan par vente à moi passée le dixième jour du mois d'Octobre, présente année, à lui concédée par D'n Zénon Trudeau, lieut't gouverneur, le 20 Sepbr. 1796. La présente vente, cession et abandon fait aux dits Ciprien Martial et Maximin avec la condition spéciale que le dit Ciprien Martial partageras avec son frère Maximin la portion qui doit lui reveuir de la donation que lui a fait le St. Joseph Brauzau, habitant de St. Louis, consistant en deux emplacements avec les bâtiments qui y sont construits et deux esclaves, de tout quoi il aura un tiers de la valeur du tout pour part, le quel tier le dit Ciprien Martial devra partager avec son frère Maximin pour avoir droit à la moitié des quatre terres sus-mentionnées que je vends et abandonne par les présente en faveur de l'un et de l'autre, sans laquelle condition la cession que je fait des dittes terres n'auroit eu lieu et ne seroit que pour le compte seul de Maximin, promettant garantir et preserver les sus-dits Ciprien Martial et Maximin l'un et l'autre
ou l'un à l'autre dans une possession paisible et tranquille des
388 dites propriétés, circonstances et dépendance· *tant pour* tant pour moi que pour les miens de touttes dettes, dons, douaires, hypothèques ou autres empèchements quelconques pour par les dits Ciprien Martial et Maximin eux et les leur et ayant causes, jouir, faire et disposer des dites propriétés sus-mentionnés tant des à prèsent comme pour toujours comme de choses à eux appartenant et légitimement acquise

bien entendre cependant qu'il n'y a aucune garantie quelconque de ma part contre les Etats-Unis et que la présente vente, cession et transport est faite à la condition expresse que si moi, Jean Elie Tholozau, je Memploie auprès des Etats-Unis ou de quelqu'un de ses membres pour obtenir la ratification et confirmation des quatre titres ci-dessus par moi vendus et cédés, ainsi qu'il est dit ci-dessus, et que je puisse y parvenir en la meilleur forme et teneur, alors je me réserve de pouvoir disposer de la moitié de la terre située dans le Mississipi sur les rivier Choret, Dardenne et Cuivre, contenant comme il est dit ci devant quatre cent quarante hui mille arpents en superficie. Également je me réserve de disposer de la moitié de la terre située plus vas que la Nouvelle Madrid, au lieu connu sous le nom de Pointe aux Alises, s'étendant dans la profondeur jusque sur la troijième branch de la rivière St. François, contenant cinq cent trente six mille neuf cent quatre arpents en superficie, comme il est dit ci-devant et
389 finalement je me réserve de disposer de la moitié de la terre située sur le haut Missouri à environ quatre cent lieues de distance de cette ville au lieu connu sous le nom d'Isle au Cedre, entre les rivières du Vieux Anglois et de la Côte de Médecine, qui tombent dans le dit Missouri, contenant environ quarante quatre mille huit cent arpents en superficie, et cela pour en faire des gratifications s'il est besoin et où il sera besoin, à l'effet d'obtenir la ratification des terres sus-mentionnées sans y comprendre la terre de huit mille arpents située dans la rivière Maramech, qui reste intacte aux dits Ciprien & Maximin, mais quant aux autres terres mentionnés en la presente vente desquelles je me réserve la moitié de chacune d'elles pour gratification le surplus qui devra consister en une pareille quantité d'arpents de chacune d'entre elles, sera partagé entre les dits Ciprien, Maximin par une portion égale à celle qui devra me rester et m'appartenir ce qui alors se trouvera réduit à la quatrième partie de la totalité des arpents de terre pour chacun de nous, bien entendue que la moitié de la totalité aura été distribuès en gratification tel qu'il est observé et pour le même usage ci-devant expliqué, car si la gratification n'avait pas lieu la moitiés des terres sus mentionnées resterait dans son entier et sans défalcation ni distraction en propriétés aux dits Ciprien Martial et Maximin, mais les dites terres resteront aux mêmes dans tout leur entier si je ne fais les diligences nécessaires en mon
390 seul et privé nom et à mes frais pour obtenir la réusite de la confirtion des susdites terres auprès des Etats Unis avant l'expiration de douze années de la datte des présentes, durant lesquelles tems lesé dits Ciprien et Maximin ne pourront d'aucune manière vendre ou céder les dittes terres qui aux conditions cidessus. A l'expiration de ce terme si la confirmation n'est point obtenue je n'ai aucune réclamation à faire pour moi ni les miens en vertu des présentes dans le cas où il n'y aurait qu'une ou deux des trois terres ci-dessus mentionnés qui seroit ratifiés et confirmés elles subiront les mêmes conventions et accords entre nous que si elles étaient confirmées toutes les trois par les Etats Unis, c'est à dire, que les dits Ciprien et Maximin n'auroit chacun droit qu'à la quatrième partie des terres qui auront été confirmées par les Etats Unis et à *sur mesuee* a sur & mesure que les dittes terres obtiendront la confirmation des Etats Unis, elles seront partagées entre nous comme il est dit ci-devant. Fait et passé entre nous à Ste. Genevieve le 24 Octobre, 1813. Et a signé et scellé en présence de témoin *temoin* Louis de Mury.

JN. ELIE THOLOZAU.

COUNTY OF STE. GENEVIEVE, *ss:*

Personally appeared before me, a justice of the peace in the said county, the above named Jean Elie Tholozau, who duly acknowledged

that he signed and delivered the within et foregoing instrument of writ
ing for the purposes therein mentioned.
391 Given under my hand, at Saint Genevieve, the 25th day of
October, 1813.

THO. OLIVER, *J. P.*

Recorded in the office of the county of St. Louis this 9th May, 1816, Book E, page 367 & following. M. P. Leduc, clerk.
Recorded this 14th October, 1816.

WM. CHRISTY, J'OR.,
Ex-officio Recorder.

STATE OF MISSOURI,
County of St. Charles, ss:

I, John K. McDearmon, clerk of the county court of St. Charles County, Mo., and ex officio recorder for said county, certify that the foregoing is a true & correct copy of the record of a deed from Jean Elie Tholozau to Ciprien, Martial, and Maximin Clamorgan, and of the certificate of acknowledgment and date of filing thereto attached, as the same now appears of record in my office, in book D, page 77 and following.
In testimony whereof I have hereto set my hand official seal this 9th day of July, 1873.

JNO. K. McDEARMON, *Recorder.*

392 Know all men who shall see these presents that I, Jean Elie Tholozau, residing in the dependencies of the county of Ste. Genevieve, Territory of Missouri, for the price and in consideration of a sum of eighteen hundred dollars, money of the United States of America, which has been well and duly paid me by Jean Bte. Pelissier, senior, as it is hereby acknowledged, and from which sum I do release and discharge him entirely as being fully satisfied therewith, I have this day sold, ceded, relinquished, abandoned, and transfer'ed, with the reservations hereinafter stipulated, all my rights, actions, and claims in favor of the persons named, Cyprian Martial and Maximin, both natural sons of Jacques Clamorgan, nephews of said Pelissier, who has declared to us to have received the aforesaid sum of the mother of said Cyprian and Maximin a long time before her death, to employ the said funds to buy any property whatever for their use and benefit, just as he executes it at this time by these presents in several lands hereinafter described, to wit:

A land of four hundred and forty-eight thousand arpens in superficie, situated on the banks of the Mississip'i, and on the rivers called "Charet" Dardenne and Copper, about twenty leagues distant of the town of St. Louis, which I, Jean Elie Tholozau, declare to have acquired of Jacques Clamorgan on the 20th day of the month of October of this present year, granted to him by Zenon Trudeau, lieut. governor of
393 Upper Louisiana, the 3rd of March, 1797, by order of his excellency the Baron de Carondelet.

Another land, situated on the Mississip'i, distant from about 12 to 15 leagues, and below the town of New Madrid, on the place known as the "Pointe aux Alises," containing five hundred thirty-six thousand nine hundred and four arpens in superficie, extending from the shores of the Mississip'i backwards to the third branch of the St. Francis River; which land I, J. E. Tholozau, declare to have acquired of Mr. Jacques Clamorgan, as per deed of sale to me delivered, and dated 1st day of August of the present year, and to him granted the 9th of August, 1796, by the lieut. governor of New Madrid.

3ly. Another land, situated in Missouri, at about four hundred leagues of this town, in the place known as the Cedars Island, between the Old English (Vieux Anglois) River and the Medicine Coast River, both on the opposite shores of the Missouri, into which they empty; which land I, J. E. Tholozau, declare to have acquired of M. Jacques Clamorgan, as per deed of sale dated on the same day, namely, the first day of August of the present year, granted to Regis Hoisel the 21st of March, 1800, containing forty-four thousand eight hundred arpens in superficie.

Fourthly. Another land, containing eight thousand arpens in superficie, situated on the Merameck River, on the place known as
394 Burel's Point, distant about eight leagues from this town, and situated on the Antaya River, where it empties its water in the Merameck aforesaid; which land I, J. Elie Tholozau, declare to have acquired of Mr. Jacques Clamorgan, as per deed of sale to me delivered, and dated the 10th day of the month of October of the present year, and to him granted by Dn. Zenon Trudeau, lieut. governor, the 20th of September, 1796.

The present sale, cession, and abandonment made to said Cyprian Martial and Maximin, with the special condition that the said Cyprian Martial shall divide with his brother Maximin the portions accruing to him by the gift made to him by Joseph Brazeau, inhabitant of St. Louis, consisting in one-third of the value of two lots, with the buildings thereon, and two slaves; which third said Cyprian Martial shall divide with his brother Maximin to have a right to the half of the four lands before mentioned, which I sell and abandon by these presents to them, without which condition the concessions which I make of said lands should not be valid and belong entirely to Maximin. Promising to warrant and secure the aforesaid Cyprian Martial and Maximin, both or either of them, in a quiet and peaceable possession of said properties, appurtenancies, and dependencies against me, my heirs, and against all debts, gifts, dowers, mortgages, or other encumbrances whatsoever, for
395 the said Cyprian Martial and Maximin, their heirs and legal representatives, to hold, manage, and dispose of the aforesaid properties now and forever as of property to them belonging and by them lawfully acquired.

It is understood, however, that there is no guarantee on my part against the United States, and that the present sale, cession, and transfer is made with the express condition that if I, Jean Elie Tholozau, apply to the United States, or to one of its members, to obtain the ratification and confirmation of the four titles hereinbefore sold and ceded by me as aforesaid, and if I may succeed to obtain the same in the best form and tenor, I reserve to myself the right to dispose of the half of the land situated on the Mississip'i and on the river "Choret Dardenne and Copper," containing, as aforesaid, four hundred and forty-eight thousand arpens in superficie.

I reserve equally to myself the right to dispose of the half of the land situated below New Madrid, at the place known as "Pointe aux Alises," extending in depth as far back as the third branch of the St. Francis River, containing five hundred thirty-six thousand nine hundred and four arpens in superficie, as established whereinbefore; and finally, I reserve to myself the right to dispose of half the land situated on
396 the Upper Missouri at a distance of about four hundred leagues from this town, at the place known as the Cedar Island, between the rivers of the Old Englishmen and the Medicine Coast, emptying their waters in the said Missouri, containing about forty-four thousand eight hundred arpens in superficie, and the above to give in grateful

gifts, if need be so, and where needed, in order to obtain the ratification for the before-mentioned lands, not including the tract of land of eight thousand arpens situated on Meramec River, which is left intact for the said Cyprian and Maximin; but for the other tracts mentioned in the present deed of sale, of which I reserve myself a right to the half of each for gratefully giving away the surplus, which shall consist of an equal quantity of arpens of each of any of those, shall be divided between the said Cyprian (and ?) Maximin, their share equal to the one which shall then rest with me and belong to me rightfully, which shall then be equal to the fourth part of the totality of arpens for each of us.

It is of course understood that the half of the totality shall have been distributed in giving away gratefully as before stated and for the same purpose before mentioned and explained; for if there is no giving away taking place the half of the aforesaid lands would not be distracted from the whole which would then remain whole and without defalcation or distraction remain the property of the aforesaid Cyprian Martial and Maximin, and the said lands shall belong to them entirely if I do not take
397 the necessary steps, in my own name and at my expense, to succeed in obtaining the confirmation of the aforesaid lands by the United States before the expiration of twelve years from the date of these presents, during which time the said Cyprian and Maximin cannot in any way sell or cede the said lands without the aforesaid condition. At the expiration of that time, if the confirmation is not obtained, I shall have no claim for me or my heirs by virtue of these presents, and in case only one or two of the three lands hereinbefore mentioned should be ratified and confirmed, they should be subject to the same conditions and agreements between us as if they were all three confirmed by the United States; that is to say, that the said Cyprian and Maximin shall have right only to the fourth part of the lands which shall have been confirmed by the United States, and that as by degrees the said lands shall be confirmed by the United States they shall be divided between us as aforesaid.

Made and executed between us at Ste. Genevieve the 24th of October, 1813, and we have signed and sealed in presence of witnesses.

JEAN ELIE THOLOZAU. [SEAL.]

Witness:

LOUIS DE MUN. [SEAL.]

COUNTY OF STE. GENEVIEVE, *ss:*

398 Personally appears before me, a justice of the peace in the said county, the above-named Jean Elie Tholozau, who duly acknowledged that he signed and delivered the within foregoing instrument of writing for the purposes therein mentioned.

Given under my hand at Ste. Genevieve the 25th day of October, 1813.

[SEAL.] THO. OLIVER, *J. P.*

Recorded in the office of the county of St. Louis this 9th May, 1816, book E, page 367 and following.

M. P. LEDUC, *Clerk.*

Recorded this 14th October, 1816.

WM. CHRISTY, JR.,
Ex-Officio Recorder.

STATE OF MISSOURI,
County of St. Charles, ss:

I, John K. McDearmon, clerk of the county court of St. Charles Co., Mo., and ex-officio recorder for said county, certify that the foregoing is a true and correct copy of the record of a deed from Jean Elie Tholozau to Ciprien Martial and Maximin Clamorgan, and of the certificate of acknowledgment and date of filing thereto attached, as the same now appears of record in my office, in book D, page 77 and following.

In testimony whereof I have hereto set my hand official seal this 9th day of July, 1873.

JNO. K. McDEARMON, *Recorder.*

399 Qu'il soit connu à tous ceux qui ces présentes verront, que moi, Jean Elie Tholozau, habitant de l'Eau Noire, conté de Laurence, de présent dans la ville et conté de St. Charles, territoire du Missoury, en considération et pour prix et somme de deux mille piastres argent des Etats Unis d'Amérique, laquelle somme m'a été bien et duement payée comptant par Louis Labeaume, habitant de Richewoode, conté de Washington et territoire sus dit, comme par ces présentes je le reconnais, et pour laquelle somme je lui donne plaine et entière quittance, j'ai ce jourd'hui vendu, cédé, quitté, transporté, abandonné et confirmé, comme par ces présentes je vends, cède, quitte, transporte, abandonne, et confirme au dt. Louis Labeaume, ses hoire ou ayant causes, tous les droits, titres, interest, actions, possessions, et propriétés que j'ai ou pourrai avoir sur une concession de terre de quatre cent quarante huit mille arpents de terre plus ou moins, laquelle j'ai acquise du St. Jacques Clamorgan par acte passé le vingt du mois d'Octobre de l'année mille huit cente treize, laquelle vente a été recordée à St. Charles le 1er Mars 1816, la dite concession accordée au Sr. Clamorgan par le Lieut. Gouverneur Zenon Trudeau le 3 Mars 1797, approuvé et confirmé par le Baron de Carondelet, gouverneur général de la Louisiane, par sa lettre officielle en date du 5 Avril de la même année, transmise et officielle-
400 ment communiquée au dt. Clamorgan par le dt. Lt. Gouverneur Zenon Trudeau le 3 du mois de Juillet suivant, bornée comme il suit: Soixante arpents en bas de l'embouchure de la rivière Dardenne, de là remontant le Mississipi, jusques à soixante arpents en haut de l'embouchure de la rivière de Cuivre, des deux pointe mentionnée cy-dessus étendre deux lignes paralleles dans la dépendance de l'ouest jusques au pied des premiere cottes et du pied des cottes, continuer et prolonger les deux dites lignes deux cents arpents de profondeur sur la dite cottes pr. ensuite réunir les pointes de ce deux lignes par une autre ligne apeupri parallèle avec le Mississipi qui doit fairè le front de la dite concession, le tout comme il court et apparait par les pieces originales recordées à l'office des terres, livre D, pages 314 & 315, pareillement tous les droits, titres, interest, actions, possessions et propriété que j'ai ou pourrai avoir sur une concession de quarante quatre mille arpents de terre, plus ou moins, que j'ai acquise du Sr. Jacques Clamorgan, par acte passé le 1er aoust, mille huit cente treize, la vente recordée à St. Charles le 1er mars, 1816, laquelle concession fut accordée et donnée au Sr. Régier Loisele par le Lt. Gouverneur Charles Dehault de Lassus, le
401 25 mars de 1800, acquise par T. V. Clamorgan par adjudication à lui faite en la vente publique des propriétés du dt. Régie Loisel, le 7 octobre de 1805, située sur le Missoury dans l'endroit connu sous le nom de l'Isle aux Cedre, entre la riviere dite au Vieux Englois et celle de la Medecine comme il courte et apparoit par les pièces originale recordée à l'office des terre, livre B. C., page 172, pour par le dt. Sr. La

beaume, lui, ses hoire ou ayant causes, en jouir, disposer, vendre, ou aliener à sa volonté, comme de chose à lui appartenant, et par lui légitimement acquise. En foi de quoi, j'ai signé et scelé cette présente vente à St. Charles le neuvième jour du mois de mai de l'année mille huit cents seize.

JN. E. THOLOZAU. [SEAL.]

Signé, scelé, et delivré en présence de
GEORGE COLLIERE,
F. fr. ST. CYR.

ST. CHARLES COUNTY,
Missouri Territory, ss:

Before me, the undersigned, one of the justices of the peace for and in the county of St. Charles, Territory afores'd, personally appeared J'hn Elie Tholozau, who acknowledged the above instrument of writing to be his act and deed for the purposes therein contained.

In witness whereof I have hereto set my hand and seal. St. Charles, the 9th of May, 1816.

[SEAL.] A. WILSON.

Recorded this 9th day of May, 1816.

W'M CHRISTY, J'R,
Ex O. Recorder.

STATE OF MISSOURI,
County of St. Charles, ss:

402 I, Jno. K. McDearmon, clerk of the county court, and ex-officio recorder of said county and State, certify that the foregoing instrument of writing is a true and correct copy of a deed and the acknowledgment of the same to and from the parties therein named, as the same appears of record in my office, in book C, page 475 and fol.

Witness my hand and official seal at office in St. Charles, Mo., this 7th day of January, 1876.

JNO. K. McDEARMON,
Clerk & Rec.,
Per E. H. FANT, *Deputy.*

403 Know all men who shall see the presents that I, Jean Elie Tholozau, residing in l'Eau noire, (Black Water,) county of Lawrence, at present residing in the city and county of St. Charles, in the Territory of Missouri, in consideration and for the sum and price of two thousand dollars of lawful money of the United States of America, which sum has been well and duly paid to me in hand by Louis Labeaume, of Richwood, county of Washington, and Territory aforesaid, as acknowledged by these presents, and for which sum I give a full and entire receipt, I have this day sold, bargained, quit-claimed, conveyed, relinquished, confirmed, and by the presents I sell, bargain, and quit-claim, convey, relinquish, and confirm to the said Louis Labeaume, his heirs and assigns, all the rights, titles, interests, actions, possessions, and properties which I have or may have in a grant (concession) of land of four hundred and forty-eight thousand arpens of land, more or less, which I have acquired of Mr. Jacques Clamorgan by deed dated the twentieth of October, one thousand eight hundred and thirteen, which sale has been recorded in St. Charles the first day of March, eighteen hundred and sixteen; said concession being granted to the said Clamorgan by Lieut't Governor Zenon Trudeau on the 3rd of March, 1797, and

approved and confirmed by the Baron of Carondelet, general
404 governor of Louisiana, by his official letter, dated April 5th of the same year, and officially communicated to the said Clamorgan by the said L't Governor Zenon Trudeau, the 3rd of the month of July, following, bounded as follows: Sixty arpens below the Dardenne River mouth, thence going up the Mississip'i up to sixty arpens above the mouth of the Copper River, (riviere Au Cuivre.) Start from the two above named points two paralelles lines westwardly to the foot of the first bluffs (hills French cotes), and from the foot of said bluffs go forward two hundred arpens up said bluffs. Then unite the ends of those two lines by another about paral'el with the Mississip'i River, which is to be the front of said grant, all as it cost and appears by the original documents recorded in the land-office book D, page 314, and 315 likewise, all the rights, titles, interests, actions, possessions, and appurtenances that I have, or may have, on a grant of forty-four thousand arpens of land, more or less, that I have acquired from M. Jacques Clamorgan by deed of sale delivered and executed the 1st of August, eighteen hundred and thirteen, the sale recorded at St. Charles the 1st of March, 1816, which concession was granted and given to M. Regier Loisel by the lieut't governor, Charles Dehault De Lassus, the 25th of March, 1800;
acquired by F. V. Clamorgan by knocking down at a public sale
405 of the estates of said Regie Loisel on the 7th of October, 1805, situated on the Missouri River, in the place known as the Cedars Island, between the rivers of the old Englishman (vieux anglais) and the Medecine, as it costs and appears by the original documents recorded in the land office B. C., page 172, for the said Mr. Labeaume, him, his heirs, or assigns to enjoy, dispose of, sell, or convey at will as a thing to him belonging and by him legitimately acquired.

In testimony whereof I have signed and sealed the present deed of sale at St. Charles, the ninth day of the month of May, of the year eighteen hundred and sixteen.

Signed, sealed, and delivered in presence of George Colliere.

J'N. E. THOLOZAU. [SEAL.]

F. f'r S. Cyr.

ST. CHARLES COUNTY,
Missoury Territory, ss:

Before me, the undersigned, one of the justices of peace for and in the county of St. Charles, Territory aforesaid, personally appeared Jno. Elie Tholozau, who acknowledged the above instrument of writing to be his act and deed for the purposes therein contained.

In witness whereof I have hereto set my hand and seal, St. Charles, the 9th of May, 1816.

[SEAL.] A. WILSON.

Recorded this 9th day of May, 1816.

WM. CHRISTY, J'OR,
Ex O. Recorder.

406 STATE OF MISSOURI,
County of St. Charles, ss:

I, John K. McDearmon, clerk of the county court, and ex officio recorder of said county and State, certify that the foregoing instrument of writing is a true and correct copy of a deed and the acknowledgment to the same, to and from the parties therein named, as the same appears of records in my office in book C, page 475 and fol.

Witness my hand and official seal at office in St. Charles, Mo., this 7th of January, 1876.

JNO. K. McDEARMON,
Clerk and Recorder,
Per E. H. FANT, *Deputy.*

407 This deed, made and entered into this thirteenth day of June, A. D. eighteen hundred and seventy-six, by and between Henry T. Blow, jor., Socrates Newman, Adele Labeaume, Louis T. Labeaume, George Labeaume, Louise Labeaume (widow of Wm. Tompkins), by themselves; also, Edmund Labeaume and William Labeaume (minors) by Henry T. Blow, next friend; also, Eugenia Labeaume, by herself; also, Mary Labeaume and Susan Labeaume, by Henry T. Blow, next friend; also, Augustus Jacobson and Alexander Labeaume, heirs of Louis A. T. Labeaume, known as Louis Labeaume, deceased, parties of the first part, and Henry Clamorgan, Julius Clamorgan, and Leon A. Clamorgan, parties of the second part, witnesseth:

That the said parties of the first part, in consideration of one hundred dollars to us paid by the said parties of the second part, the receipt of which is hereby acknowledged, do by these presents remise, release, and forever quit-claim unto the said parties of the second part, to have and hold the same in the following shares, viz, Henry Clamorgan one-half, and Leon A. and Julius Clamorgan one-fourth each, all our right,
408 title, and interest in and to three private land claims, granted Jacques Clamorgan by concession of Zenon Trudeau, then lieutenant-governor under Spain of Upper Louisiana, on March 3d, 1797, and confirmed by the governor-general, the Baron de Carondelet, on the fifth day of April, 1797, which three claims are described as follows, viz:

1st. A claim for an undefined quantity of land situated between the Cuiver River, which bounds it to the northward, and the Dardenne River or Creek, which bounds it to the southward, with the Mississip'i River as the eastern boundary, the western boundary being a line not yet established.

2nd. A claim for an undetermined quantity of land, bounded southward by the river Cuivre, and the tract or claim last described, extending up the said Mississippi, on the right or western bank thereof, sixty lineal arpens from the mouth of said Cuiver River, and bounded on the eastward by said Mississi'pi River, for said distance of sixty lineal arpens, and bounded nort'wardly by a straight line to run westwardly from the right bank of said Mississip'i River at a point sixty
409 arpens above the mouth of said Cuiver River, as aforesaid, the western boundary being a line not yet determined.

3d. A claim for an undetermined quantity of land, bounded northwardly by said Dardenne River or Creek, and the claim first described, with the Mississip'i River bounding it to the eastward, and bounded to the southward by a line run westwardly from the right or west bank of said Mississip'i River at a point sixty lineal arpens below the mouth of said Dardenne River, the western boundary being a line not yet established or ascertained; being the same lands or claims purchased by the said ancestor of the parties of the first part from John Eli Tholozan, May 9th, 1816, the deed of which is recorded in the records of the recorder's office of St. Charles County, in book C, page 475:

To have and to hold the same, together with all the rights, immunities, privileges, and appurtenances to the same belonging, unto the said parties of the second part, and to their heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

HENRY T. BLOW, JR. [SEAL.

410 EDMUND LABEAUME, [SEAL.]
By HENRY T. BLOW, *Next Friend.* [SEAL.]
WILLIAM LABEAUME, [SEAL.]
By HENRY T. BLOW, JR., *Next Friend.* [SEAL.]
MARY LABEAUME, [SEAL.]
By HENRY T. BLOW, JR., *Next Friend.* [SEAL.]
SUSAN LABEAUME, [SEAL.]
By HENRY T. BLOW, JR., *Next Friend.* [SEAL.]
SOC. NEWMAN. [SEAL.]
MARY E. LABEAUME. [SEAL.]
EUGENIA O. HARRIS. [SEAL.]
Formerly EUGENIA O. LABEAUME. [SEAL.]
SUSAN L. LABEAUME. [SEAL.]

411 I, Cyprian Martial Clamorgan, of the State of Missouri & county & city of St. Louis, being of sound mind & disposing memory, being sensible that my final dissolution is at hand, and wishing to settle all my temporal affairs as far as is now in my power, I do hereby solemnly make, ordain, establish, & publish this my last will and testament, to be observed & fully kept by my executors, jointly & severally, that is to say:

Item. I give and bequeath to Henry Clamorgan, now an infant of five or six years of age, who is the second natural son of my natural sister, Apauline Clamorgan, in full right & property, to have & to hold to him, his heirs & assigns forever, in fee simple, a lot of ground of which I now stand seized & possessed, situate, lying, & being in the city of St. Louis, & is bounded on the east, forty-three feet, by the first or main street of said town, on the north, seventy-two & a half feet, more or less, by a lot of Sylvester Pratte, on the west, forty-three feet, by a lot of said Apauline Clamorgan, & on the south by a cross street which separates said lot from the Missouri Hotel, which said lot is situate on block No.
412 25 on the plat of the city of St. Louis.

Item. I also give & bequeath in like manner to the said Henry Clamorgan and to his heirs & assigns forever a *a* small stone building, situate on said block No. 25, bounded on the east by the stone house of the said Apauline Clamorgan seventeen feet, and a small plat of ground attached to said house, bounded as follows, to wit, bounded on the east by the said stone house of the said Apauline twenty-nine feet, more or less, on the north by a small lot or square of ground belonging to the said Apauline, thirty-two feet; on the west by a twelve-feet alley, twenty-nine feet, more or less, & on the south by a cross street thirty-two feet; which said crosse street separates said lot from the lot whereon stands the stone house called the Missouri Hotel, which said lots are to be leased out by my executors, or either of them, on such terms as they or either of them may think most advantageous for the preservation & permanent improvement thereof, & it is my desire that the rents & profits arising from said lots & house which may remain after current expenses are paid shall be applied by
413 my executors or the guardian of said Henry to his support and education until said Henry arrives to the age of twenty-one years, when the said Henry shall take the possession & management of said lots & house into his own hands.

Item. I give & bequeath in like manner to Louis & Louisa Clamorgan, the infant son & daughter of my said sister Apauline Clamorgan, to have & to hold as tenants in common, & to their heirs & assigns forever, a lot of ground, situate on said block No. twenty-five, bounded as follows: beginning at the northwest corner of the stone enclosure which surround the whole premises, being the southwest corner of a lot originally granted to one Lapierre, & on Second street; thence southwardly with the eastern edge of said Second street seventy feet to the northwest corner of a lot of said Appauline Clamorgan; thence eastwardly with the northern boundary line of the said lot of the said Apauline and passage or alley aforesaid to the western boundary line of another small lot of said Apauline one hundred & eighty feet; thence northwardly with the western boundary of said lot to the corner about twelve feet; thence eastwardly with the northern boundary line of said
414 lot of said Apauline to the western boundary line of a lot of Sylvester Pratte about thirty feet; thence northwardly with the western boundary line of said Pratte's lot to the lot now occupied by Lewis Newell, on which is a blacksmith's shop, about fifty-eight feet; thence westwardly with the southern boundary line of said lot occupied by said Newell & the lot granted to the said Lapierre about one hundred & ninety feet, to the beginning corner. And it is my will that my executors do lease said lot & the house thereon on such terms as may be most advantageous for the preservation & permanent improvement thereof, until the said Louisa marries or arrives to the age of twenty-one years, and that the rents & profits arising therefrom, after deduction of necessary expenses for repairs, taxes, &c., be applied by my executors or the guardian or guardians of the said Louis & Louisa to their support and education, & that when said Louisa marries or arrives to the age of twenty-one years that equal partition of said lot be made between her & the said Lewis; & if either the said Louisa or Lewis shall die before partition of said lot as aforesaid without issue of their bodies, then it is my will that the survivor have & enjoy the whole of said lot in fee simple.

415 Item. I give and bequeath to my said sister Apauline, & to her said children, Louis, Henry, & Louisa, & to the survivors of of them, all the interest & estate which I may have or be entitled to in law or in equity, to any lands, lots, or houses, in, lying & being in the State of Missouri, to have or to hold the same as tenants in common to them & their heirs forever.

Item. I give & bequeath to my sister Apauline my personal property of every nature & character whatsoever, including all my debts, dues, monies, & rents—a horse & cart absolutely—on condition that she pay such debts & demands against me as may be hereafter established against me or my estate, or executors, as far as the said personal property shall extend.

Item. I appoint Charles Collins & Apauline Clamorgan to be my executors.

Item & lastly. I bequeath my soul to God my maker, my body to the earth, and bid an eternal adieu to the world, whenever it shall please God to call me hence to another world.

In testimony whereof I have hereunto set my hand & affixed

416 my scrawl, by way of seal, at the city of St. Louis, this 22 day of February, in the year of our Lord eighteen hundred & twenty-seven.

CYPRIAN CLAMORGAN. [SEAL.]

Witness:
ISAAC C. MCTIRK.
PETER FERGUSON.
LEWIS NEWELL.
JOHN KORKNESS.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered, that on this 27th day of May, in the year eighteen hundred and twenty-seven, personally appeared before me, clerk of the county court of St. Louis County, Isaac C. McTirk & Peter Ferguson, two of the subscribing witnesses to the last will and testament of Cyprian Martial Clamorgan, dec'd, who being duly sworn, upon their oaths say that they were present and saw the said Cyprian Martial Clamorgan sign, seal, & declare, & publish the within as his last will & testament; that at the time of executing the same, he, said Clamorgan, was of sound and disposing mind; that he declared the same to be his last will & testament in their presence, & signed the same as such, and that they *is* his presence, & at his request, signed the same as subscribing witnesses thereby.

S. C. McGIRK.
PETER FERGUSON.

417 Sworn to and subscribed before me this 27th day of May, A. D. 1827.

JOHN BENT. *D. Clerk.*

STATE OF MISSOURI.
County of St. Louis, ss:

I, Wm. E. Wagner, clerk of the probate court within and for the county of St. Louis aforesaid, do hereby certify the foregoing to be a true and complete copy of the last will and testament of Cyprien Martial Clamorgan, deceased, and of the probate thereof, as fully as the same remains on file and appears of record in my said office.

In witness whereof I hereto set my hand and affix the seal of said court, at office in St. Louis, the tenth day of June, 1876.

[SEAL.] W. E. WAGNER, *Clerk.*
By C. B. McENTIRE,
Deputy Clerk.

418 In the name of God, amen!

I, Apauline Clamorgan, being of sound and disposing mind, do make, publish, declare, and ordain this my last will and testament, in manner and form following, that is to say:

First wishing and intending, as far as in me lies, to place my several children on equal footing in a pecuniary point of view, & as regards their worldly advancement at the time of my dissolution, and forasmuch as my second son and child Henry has been sufficiently provided for & established in the world by the will of his uncle Cyprien Martial Clamorgan, deceased, and placed in better situation, in a pecuniary point of view, than I remain able to place the balance of my children, therefore I will, ordain, & require of my executor hereinafter named as to execute this my said last will & testament, that said Henry shall receive no por-

tion or part of my real estate, except as hereinafter mentioned, but shall only be entitled to his equal portion of the proceeds of the personal property which I may leave at the time of my death.

Item. I do hereby give, bequeath, & devise to my children in equal proportions & to be equally divided amongst them, to wit: Louis, Louisa, & any & all other children which may hereafter before my death be born to me, a certain lot, piece, or parcel of land, situate, lying,
419 and being in the city of Saint Louis, county of Saint Louis, and State of Missouri, bounded south by a cross street commonly called Oak street; west, by Second, Main, or Church street; and north, by lots now or late the property of Laprise and Pratte, the property hereby & herein bequeathed and devised being all my right, title, interest, and property, of, in, and to a certain larger lot, as quantity of land heretofore, to wit, on the eight' day of May, in the year of our Lord one thousand eight hundred and three, by Joseph Brazeau, for & through Jacques Clamorgan, conveyed to St. Eutrope, Cyprian Martial, and the said Apauline Clamorgan, the textatrix, which said lot contained the quantity of one hundred and twenty feet front by three hundred feet in depth, being in block numbered twenty-five, on the plat of said city of Saint Louis.

Item. I hereby give, devise, and bequeath to Alexander Fryer all my right, title, and interest in and to a certain part or portion of said above described lot of ground which I may have by virtue of a deed of mortgage, bearing date on the third day of October, in the year of our Lord one thousand eight hundred and twenty-nine, executed by said Alexander Fryer to me, & about which a suit in ejectment is now pending
420 in the supreme court of the State of Missouri for the recovery of the same, upon condition, nevertheless, that the said Alexander secure and save harmless my heirs, executors, &c., from all debts, dues, damages, and demands, due or to become due, accrued or to accrue, for improvements on other claim by & in favor of Charles Collins or his assigns on account of said piece of lot, which is estimated to contain fifty-nine feet fronting on said Second or Church street, by one hundred and forty-three feet in depth, running to and fronting on a cross street commonly called Oak or Ferry street.

Item. I give and bequeath to my said children Louis, Henny, Louise, & any & all others hereafter to be born to me, & to the survivor or survivors of them, and their heirs & assigns, all the interest and estate which I may have or be entitled to in law or equity to any lands, lots, & houses, lying & being within the State of Missouri; to have and to hold the same as tenants in common, and not as joint tenants.

Item. I hereby nominate and appoint Alexander Fryer, of the city & county of Saint Louis, my true & lawful executor, to do & perform this my last will and testament, and guardian of my said children, with full power for them to prosecute all & any suits which may be neces-
421 sary for the recovery and establishment of their titles through & under me to any unconfirmed lands, lots, & houses in the said State of Missouri, & to make such bargain with counsel for that purpose & pledge such unconfirmed property for the payment of counsel & assistance, as to him shall seem meet & reasonable.

Item. I hereby exempt my said executor from the necessity of giving any security for his faithful performance of the trust herein & hereby reposed in him.

Item. It is my wish and request that my said executor provide a suitable place for my daughter Louisa, and bind or otherwise dispose of her at such place to be educated and reared in a decent & becoming manner

& to put out and bind my two sons Louis and Henry, to some useful trade until they arrive at the age of twenty-one years.

Signed, sealed, published, and declared by me to be my last will and testament in manner and form above set forth, with two words interlined in the twelfth & one in the twenty-fifth line from the beginning, and an erasure in the last section of my said will.

PAULINE CLAMORGAN. [SEAL.]

In the presence of the undersigned, who have signed the same as subscribing witnesses to the same in presence of the testatrix
422 and of each other, this eleventh day of April, A. D. 1839.

JOHN BENT.

D. KIMBALL.

STATE OF MISSOURI,

County of St. Louis, ss:

Be it remembered that at a term of the county court, within and for the county of St. Louis, in the State of Missouri, began and held at the city of St. Louis, in said county, on the third day of May, in the year of our Lord eighteen hundred and thirty, personally appeared in open court John Bent and Dudly Kimball, subscribing witness' to the foregoing instrument of writing, and they, said John Bent and Dudly Kimball, being duly sworn, upon their oaths, according to law, severally deposed and said that they were present and did see the above named Pauline Clamorgan sign the foregoing instrument of writing, and heard her publish, pronounce, and declare the same to be her last will and testament, and that at the time of so doing, she, the said testatrix, was of sound and disposing mind to the best of their knowledge, observation, and belief, and that the said deponents subscribed their names thereto in the presence and at the request of the testatrix, and in the presence of each other as witnesses to the same. Whereupon it was considered by the court that said instrument of writing was duly proved to the last will and testament of the said Pauline Clamorgan, and ordered the same to be recorded.

423 In witness whereof I, Henry Chouteau, clerk of said county court, have hereunto affixed the seal of said court, at office, this twelfth day of May, in the year of our Lord eig'teen hundred and thirty.

[SEAL.] HENRY CHOUTEAU, *Clerk.*

STATE OF MISSOURI,

County of St. Louis, ss:

I, Wm. E. Wagner, clerk of the probate court, within and for the county of St. Louis aforesaid, do hereby certify the foregoing to be a true and complete copy of the last will and testament of Pauline Clamorgan, deceased, and of the probate thereof, as fully as the same remains on file and appears of record in my said office.

In witness whereof I hereto set my hand and affix the seal of said court at office in St. Louis this fifteenth day of June, 1876.

W. E. WAGNER, *Clerk,*

By C. B. McENTIRE,

Deputy Clerk.

Names of persons charged with taxes.	Confirmed land.	Unconfirmed land.	County in which the land lies.	Water courses in which the land lies.	Original claimant, when known.	Town lots.	Valuation.	Dwelling-house in the country.	Valuation.	Slaves above 10 years.	Pleasure carriages.	Aggregate amount of tax.	Remark.
Tourtelotte, Joseph H	"	"	"	"	"	"	"	1	30	"	"	"	0.9
Teague, Nathaniel	"	"	"	Dardenne	"	"	"	1	40	"	"	"	0.12
Teague, Peter	"	"	"	"	St. Charles	1	50	"	"	"	"	"	0.15
Tayon, Charles	"	"	"	"	"	1	1.50	"	"	2	"	1.70	"
Tayon, Joseph	"	"	"	"	"	1	50	"	"	"	"	" .15	"
Tayon, Madam, J'n	"	"	"	Cuiver	"	1	1.50	"	"	"	"	" .45	"
Tolosan, Jean Eli	"	448,000	Saint Charles	Big Calumet	Jacques Clamorgan	"	"	"	"	"	"	1120.00	Listed by information.
Tucker, Nathaniel B. & Quarly	"	10,000	"	Waters Cuiver	Peter Provonshere	"	"	"	"	"	"	12.50	"
Teayon, Albert	"	15,076	"	Same	Albert Teayon	"	"	"	"	"	"	37.71	Same.
Same	"	8,000	"	Dardenne	Unknown	"	"	"	"	"	"	20.00	Same.
Voisard, Joseph	120	"	"	Femme Osage	Genereaux	"	"	1	150	"	"	1.62	
Vanhebien, Isaac	400	"	"	Same	Isaac Vanhebien	"	"	1	200	3	"	4.87½	
Same	178	"	"	Lienter	Alexander M. Courteau	"	"	"	"	"	"	1.6⅛	
Same	210	"	"	Femme Osage	Nathan Boon	"	"	"	"	"	"	1.26	
Vanhebien, James	640	"	"	Portage des Sioux	James Vanhebien	"	"	1	100	"	"	4.14	
Viel, Peter	"	"	"	"	"	1	25	"	"	"	"	" 7½	

SAINT CHARLES, COUNTY OF ST. CHARLES, MISSOURI,
July ninth, 1873.

I, John K. McDearmon, clerk of the county court in the county of Saint Charles, estate of Missouri, do hereby certify that the above & foregoing, written upon this side of this sheet of paper, is a true, correct, & literal copy of the 33d folio, or one complete page, of the assessment or list of Territorial taxes for the year 1816, the original being deposited in my office.

And I do further certify that said original list or assessment has the following certificate at the begin'ing of the same, to wit: A list of taxable property & persons of the county of Saint Charles, assessed by Joseph Enaux, deputy sheriff for Nathaniel Simon, sheriff of Saint Charles County, in obediance to acts of the Territorial legislature in such case made a provided, for the year one thousand eight hundred
426 and sixteen; and I, Joseph Enaux, deputy sheriff for the county of Saint Charles, do hereby certify that after I was duly qualified as the law directs, I impartially assesssed the taxable persons' property of said county to the best of my knowledge and the information I could procure.

Certified this 19th day of June, 1816, at St. Charles.

(Signed) JOSEPH ENAUX,
D. S. for N. Simonds, S. St. Charles County, Missouri Territory.

In testimony of which I hereby affix my official seal & sign my official signature at Saint Charles, county of Saint Charles, estate of Missouri, this ninth day of July, A. D. 1873.

[SEAL.] JOHN K. McDEARMON, *Clerk.*

427 An act for the relief of Henry Clamorgan, Cyperian Clamorgan, and the heirs of Louis Clamorgan, deceased.

Whereas the administrator of Cyperian Martial and Maxime Clamorgan did, on the day of December, 1859, sell to the highest bidder all the right, title, and interest of his intestates in and to a certain certificate of location; issued by the surveyor-general on the eight' day of August, in the year 1859, to Regis Loisel, or his legal representatives, for thirty-eight thousand one hundred and eleven and ten-hundredths acres of land, located in the Territory of Kansas, for the sum of three thousand six hundred dollars; and whereas the said Cyperian Martial and Maxime Clamorgan, at the time of their decease, had no legal heirs according to the laws of inheritance of the State of Missouri, and their estate would therefore, by law, escheat to the State of Missouri;

And whereas Henry Clamorgan, Cyperian Clamorgan, and the children of Louis Clamorgan, deceased, are the sole natural heirs of the said Cyperian Martial and Maxime Clamorgan, and alone have a natural claim to the estate of the said intestate estates: Therefore,

Be it enacted by the general assembly of the State of Missouri:

428 SECTION 1. That the court of probate of St. Louis County be authorized and directed, on application of the parties in interest, to hear testimony to ascertain who are the natural heirs or claimants of the estate of Cyperian Martial and Maxime Clamorgan, the deceased intestates.

SECTION 2. That when the natural heirs or claimants of said estates are ascertained the said estates shall be administered and distributed among such natural claimants according to the laws of distribution in

all respects as if said natural claimants were the legitimate and lawful heirs of said intestates.

SECTION 3. That the State of Missouri does hereby relinquish all claim to said estates by virtue of the law of escheats, or otherwise, in favor of the said natural claimants.

SECTION 4. That this act take effect from and after *his* passage.

Approved March 23, 1863.

STATE OF MISSOURI:

I, Michael K. McGrath, secretary of state of the State of Missouri, hereby certify that the annexed pages contain a full, true, and complete copy of an act of the general assembly of the State of Missouri,
429 entitled "An act for the relief of Henry Clamorgan, Cyperian Clamorgan, and the heirs of Louis Clamorgan, deceased," approved March twenty-third, A. D. eighteen hundred and sixty-three, as appears by comparing the same with the original roll of said act now on file, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed my seal of office. Done at office, in the city of Jefferson, this twelfth day of June, A. D. eighteen hundred and seventy-six.

[SEAL.] MICH. K. McGRATH.
Secretary of State.

430 *Order to pay & appeal.*

STATE OF MISSOURI,
County of St. Louis, ss:

In the probate court for the county of St. Louis, June term, 1863.
Monday, June 22nd, 1863.

James E. Mumford, administrator of Cyprian M. Clamorgan, deceased.

On the petition of Henry Clamorgan, and on due proof of notice to James E. Mumford, administrator de bonis non with the will of Cyprian Martial Clamorgan, and the court being satisfied that Henry Clamorgan, Cyprian Clamorgan, Leon Clamorgan, and Julius Clamorgan are the natural heirs of Cyprian Martial Clamorgan and Maximin Clamorgan, and in pursuance of and in conformity to an act of the general assembly of the State of Missouri, approved 23d March, 1863, entitled "An act for the relief of Henry Clamorgan, Cyprian Clamorgan, and the heirs of Louis Clamorgan," do order that said administrator pay to said Henry Clamorgan and Cyprian Clamorgan each the sum of five hundred and thirty-three dollars thirty-three cents, and to Leon M. Clamorgan
431 and Julius Clamorgan, children of Louis Clamorgan, each the sum of two hundred and sixty-six dollars sixty-six cents; and thereupon said Mumford files his affidavit and prays an appeal from the judgment of the court in this case to the circuit court of the county of St. Louis, which is granted, and a certified transcript of the record and proceedings in this case and the original papers in the same are ordered to be transmitted to the clerk of the circuit court of the county of St. Louis.

Order to pay & appeal.

James E. Mumford, administrator of Maximin Clamorgan.

On the petition of Henry Clamorgan, and on due proof of notice to James E. Mumford, administrator of Maximin Clamorgan, and the court being satisfied that Henry Clamorgan, Cyprian Clamorgan, Leon Clamorgan, and Julius Clamorgan are the natural heirs of Cyprian Martial Clamorgan and Maximin Clamorgan, and in pursuance of and in conformity to an act of the general assembly of the State of Missouri, approved 23 March, 1863, entitled "An act for the relief of Henry Clamorgan, Cyprian Clamorgan, and the heirs of Louis Clamorgan," do order that said administrator pay to said Henry Clamorgan &
432 Cyprian Clamorgan each the sum of five hundred and thirty-three dollars thirty-three cents, and to Leon N. Clamorgan and Julius Clamorgan, children of Louis Clamorgan, each the sum of two hundred and sixty-six dollars sixty-six cents; and thereupon said Mumford appears and files his affidavid and prays an appeal from the judgment of the court in this case to the circuit court of the county of St. Louis, which is granted, and a certified transcript of the record and proceedings in the case and original papers in the same are ordered to be transmitted to the clerk of the circuit court of the county of St. Louis.

A true copy from the record of said court in my office remaining.

Attest, with the seal of said court hereto affixed, at office in the county aforesaid, this thirteenth day of January, 1875.

[SEAL.] W. E. WAGNER, *Clerk.*

Dismissal.

In the circuit court of St. Louis County. November term, 1864. Friday, November 25th, 1864.

In the matter of James E. Mumford, admin'or of Maximin Clamorgan, appellant.

On motion of James E. Mumford, it is ordered by the court that this suit be dismissed at the costs of the appellant, and that execution issue therefor.

433 *Dismissal.*

In the matter of James E. Mumford, adm'r de bonis non with the will of Cyprian M. Clamorgan.

On motion of James E. Mumford, it is ordered by the court that this suit be dismissed at the costs of the appellant, and that execution issue therefor.

STATE OF MISSOURI,
County of St. Louis, ss:

I, J. Fred. Thornton, clerk of the circuit court of St. Louis County, certify the above and foregoing to be true copies of the dismissals of the above-entitled causes as fully as the same remain of record in my office.

In testimony whereof I hereto set my hand and affix the seal of said

court, at office, in the city of St. Louis, this 10th day of June, A. D. 1876.

[SEAL.] J. FRED. THORNTON, *Clerk.*

434 Supreme Court of the United States. December term, 1872.

THE UNITED STATES, APPELLANT,
vs.
JOSEPH REYNES. } No. 370.

Appeal from the district court of the United States for the district of Louisiana.

This cause came on to be heard on the transcript of the record from the district court of the United States for the district of Louisiana, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, affirmed.

18 April, 1873.

True copy. Test:

D. W. MIDDLETON,
Clerk Sup. C't U. S.

435 Supreme Court of the United States. October term, 1873.

THE UNITED STATES, APPELLANT,
vs.
DUNCAN F. KENNER ET AL., HEIRS OF WILLIAM Kenner, deceased. } No. 144.

Appeal from the district court of the United States for the district of Louisiana.

This cause came on to be heard on the transcript of the record from the district court of the United States for the district of Louisiana, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, affirmed.

15 Dec'r, 1873.

True copy. Test:

D. W. MIDDLETON,
Clerk Sup. Ct. U. S.

436 Supreme Court of the United States. October term, 1873.

THE UNITED STATES, APPELLANTS,
vs.
THE HEIRS OF G. LEONARD, DECEASED. } No. 145.

Appeal from the district court of the United States for the district of Louisiana.

This cause came on to be heard on the transcript of the record from

the district court of the United States for the district of Louisiana, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, affirmed.

15th Dec'b'r, 1873.

True copy. Test:

D. W. MIDDLETON,
Clerk Sup. Ct. U. S.

437 Supreme Court of the United States. October term, 1873.

THE UNITED STATES, APPELLANTS,
vs.
FERGUS PENISTON & AL. } No. 146.

Appeal from the district court of the United States for the district of Louisiana.

This cause came on to be heard on the transcript of the record from the district court of the United States for the district of Louisiana, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, affirmed.

15th Dec'b'r, 1873.

True copy. Test:

D. W. MIDDLETON,
Clerk Sup. C't U. S.

438 Supreme Court of the United States. October term, 1873.

THE UNITED STATES, APPELLANTS,
vs.
CALEB CUSHING. } No. 147.

Appeal from the district court of the United States for the district of Louisiana.

This cause came on to be heard on the transcript of the record from the district court of the United States for the district of Louisiana, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, affirmed.

15th Dec'b'r, 1873.

True copy. Test:

D. W. MIDDLETON,
Clerk Sup. C't U. S.

439 Supreme Court of the United States. October term, 1873.

THE UNITED STATES, APPELLANTS,
vs.
MANDERVILLE, MARIGNY & AL. } No. 158.

Appeal *for* the district court of the United States for the district of Louisiana.

This cause came on to be heard on the transcript of the record from

the district court of the United States for the district of Louisiana, and was argued by counsel.

In consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be and the same is hereby affirmed.

16th Dec'b'r, 1873.

True copy. Test:

D. W. MIDDLETON,
Clerk Sup. C't U. S.

440 Supreme Court of the United States. October term, 1873.

THE UNITED STATES, APPELLANTS,
vs.
THE HEIRS OF THOMAS POWER, DECEASED. } No. 159.

Appeal from the district court of the United States for the district of Louisiana.

This cause came on to be heard on the transcript of the record from the district court of the United States for the district of Louisiana, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be and the same is hereby affirmed.

16 Dec'b'r, 1873.

True copy. Test:

D. W. MIDDLETON,
Clerk Sup. C't U. S.

441 Supreme Court of the United States. October term, 1873.

THE UNITED STATES, APPELLANTS,
vs.
MICHEL DE ARMAS & AL. } No. 160.

Appeal from the district court of the United States for the district of Louisiana.

This cause came on to be heard on the transcript of the record from the district court of the United States for the district of Louisiana, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be and the same is hereby affirmed.

16th Decb., 1873.

True copy. Test:

D. W. MIDDLETON,
Clerk Sup. C't U. S.

442 Supreme Court of the United States. October term, 1873.

THE UNITED STATES, APPELLANTS,
vs.
FRANCOIS E. TRUDEAU AND HER HUSBAND. } No. 185.

Appeal from the district court of the United States for the district of Louisiana.

This cause came on to be heard on the transcript of the record from

the district court of the United States for the district of Louisiana, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged and decreed by this court that the decree of the said district court in this cause be and the same is hereby affirmed.

9th Jan'y, 1874.

True copy. Test:

D. W. MIDDLETON,
Clerk Sup. C't U. S.

443 Supreme Court of the United States. October term, 1873.

THE UNITED STATES, APPELLANTS,
vs.
THE CITIES OF BALTIMORE AND NEW ORLEANS. } No. 186.

Appeal from the district court of the United States for the district of Louisiana.

This cause came on to be heard on the transcript of the record from the district court of the United States for the district of Louisiana, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be and the same is hereby affirmed.

9th Jan'y, 1874.

True copy. Test:

D. W. MIDDLETON,
Clerk Sup. C't U. S.

444 Supreme Court of the United States. October term, 1873.

THE UNITED STATES, APPELLANTS,
vs.
HARRIET SAINT & ALL HEIRS OF JAMES JOHNSON, deceased. } No. 246.

Appeal from the district court of the United States for the district of Louisiana.

This cause came on to be heard on the transcript of the record from the district court of the United States for the district of Louisiana, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be and the same is hereby affirmed.

20th March, 1874.

True copy. Test:

D. W. MIDDLETON,
Clerk Sup. Ct. U. S.

445 STATE OF MISSOURI,
County of St. Louis, ss:

Henry Clamorgan, one of the petitioners in the suit of Henry Clamorgan & al. vs. The United States, being first duly sworn, on his oath states that he has made diligent search & inquiry for the original of the

following papers relating to this suit, viz: The petition of his grandfather, Jacques Clamorgan, presented to Don Zenon Trudeau, March 1, 1797, praying for a grant of land between the Cuiver & Dardenne rivers, and to the north and south of the same; also, the grant of said land March 3, 1797, from Zenon Trudeau, lieut. governor, to Clamorgan; also the letter of Zenon Trudeau addressed to said Clamorgan on July 3, 1797, containing a letter from Baron de Carondelet confirming said grant. Affiant states that he has been unable to find said originals and believes them to be lost or destroyed.

HENRY CLAMORGAN.

Subscribed and sworn to before me this 15th day of June, 1876, as witness my hand & seal.

[SEAL.]

A. D. ANDERSON,
Notary Public, St. Louis Co.

Qualified May 21st, 1875, for a term ending April 7, 1881.

446 STATE OF MISSOURI,
County of St. Louis, ss:

Henry Clamorgan, being first duly sworn, on his oath states that he is one of the parties to the suit of Henry Clamorgan and al. vs. The United States; that Louisa Clamorgan mentioned in the will of Apoline Clamorgan was his sister; that she died about the year 1834, being unmarried and without issue; that she died intestate; that Louis & Henry Clamorgan, her brothers, survived her.

HENRY CLAMORGAN.

Subscribed & sworn to before me this 15th day of June, 1876, as witness my hand & notarial seal.

A. D. ANDERSON,
Notary Public, St. Louis Co., Mo.

Qualified May 21, 1875, for a term ending Ap'l 7, 1881.

447 I was employed as counsel in 1873 by the Clamorgans in their land suit against the United States for the confirmation of the grants to their ancestor, Don Jacques Clamorgan, made by the lieutenant-governor of Upper Louisiana, Don Zenon Trudeau, on March 3d, 1797, & ratified by the governor general, the Baron de Carondelet, on the 5th April, 1797. Ever since then I have been making every reasonable effort to discover & obtain, to be filed in evidence in said suit, the original petition of Clamorgan to Trudeau of March 1st, 1797, the original concession of said Trudeau made to said Clamorgan on March 3d, 1797, & the said original letter from said Trudeau to said Clamorgan, dated July 3d, 1797, informing said Clamorgan that Carondelet had on April 5th, 1797, confirmed his, said Clamorgan's, grant.

I have urged the Clamorgans at all times to recover said originals, & they have endeavored to do so but have failed, & have ever been at a loss to know where to search or who to apply to for them.

I have, with the assistance of the recorder of land titles at St. Louis & his clerk, twice made thorough searches at his office for them, but to
448 no purpose. I have, through my brother & their law partner, R. H. Bradford, in Washington, D. C., caused a faithful search to be made, but without success, among the archives of the Committee on Private Land Claims in the House of Representatives at Washington. The said originals were not to be found there. I also examined the office of the recorder for St. Charles County, in Missouri, where part of

the lands claimed are situated and where all the private sales affecting them have been recorded, but could not find said originals there.

JAMES L. BRADFORD.

Subscribed and sworn to before me this 15th day of June, 1876, as witness my hand & notarial seal.

A. D. ANDERSON,
Notary Public, St. Louis Co., Mo.

Qualified May 21, 1875, for a term ending April 7, 1881.

449 In the United States district court for the southern district of Missouri.

HENRY CLAMORGAN ET AL. *vs.* THE UNITED STATES. & HENRY T. BLOW, JR., ET AL., *vs.* THE UNITED STATES. } Consolidated.

The parties complainant & defendant in the above-entitled suit stipulate & agree as follows:

The United States maintain there was no severance of the lands said to be granted to Jacques Clamorgan & sued for in these suits by reason of the conflict of calls & description. That in the event the court here, or the Supreme Court, on appeal, or both, shall decide there was a severance, then it is contended by the United States that one of four maps or plans designated as Plan H, Plan I, Plan J, Plan K, represents said severance & the quantity of land so severed & liable to recovery by the complainants.

The complainants contend that there was a severance by reason of the call for natural boundaries & for other reasons, & that their new Plan F et statement G filed with their first amended petition,
450 and the Plan E, & statement D, filed in said suit of Henry T. Blow et al. (being a copy of the Plan F), truly represent such severance & the mode by which said grants should be located.

Now it is admitted by the complainants & defendants that all of the said plans F, H, I, J, and K, & Plan E, truly represent the situation of the rivers Mississipy, Cuiver, & Dardenne, or La Charette, & the situation of the mouths and sources of the two latter, the main Cuiver, for the purposes of this suit being the south fork as shown in Plan F & Plan E, & that all the lands embraced in any or all of said six plans have been before the institution of this suit so disposed of by the United States that no portion thereof can be patented to the plaintiffs in the event of final confirmation, and it is further stipulated by the parties that the district court now & the Supreme Court on appeal shall decide if there be a severance or no, & shall in the event of a decision in favor of severance adopt one of said six plans as representative of said severance, & shall then give judgment for indemnity lands equal in amount to the quantity contained in said plan. & to enable said courts to
451 give such judgment, said plans are to be now referred to an expert who is to make a sworn report stating the quantity in acres in each plan, to be approved by the court and filed in evidence; these stipulations are for the purposes of avoiding the trouble & expense of

actual survey, & the uneasiness it might create among the people who own the lands covered by the grants to Clamorgan.

It is further agreed that the volumes of the American State Papers relating to the public lands & the report of the commissioners, dated September 30th, 1835, may be read in evidence before the district court and Supreme Court without the necessity of either party copying any portions of said papers in the record of appeal.

DAVID P. DYER,
U. S. Att'y.
JAMES L. BRADFORD,
GROVER & ELLIS,
Att'y for Henry T. Blow, jr., et al.
A. D. ANDERSON.

It is further stipulated & agreed that the volumes one & two of White's Recapilacion & all other public documents relating to the grant to Clamorgan may be read in evidence for either party in the district & Supreme Courts without the necessity of incorporating any por-
452 tion thereof in the transcript of the record of appeal.

June 19th, 1876.

BEN. EMMONS,
Ass't U. S. Att'y.
J. L. BRADFORD.
GROVER & ELLIS.
A. D. ANDERSON.

453 In the U. S. dist. court, east. dist. of Mo.

HENRY CLAMORGAN ET AL. } }
vs. }
THE UNITED STATES. } }
& }
HENRY T. BLOW ET AL. } }
vs. }
THE UNITED STATES. } }

It is admitted that the following have been truly translated from the certified copies on file as evidence:

1. Translation of notice of claim by Jacques Clamorgan.
2. Translation of deed from Jacques Clamorgan to Jean Eli Thologan.
3. Translation of *and* from Jean Eli Thologan to Cyprian M. and Maximim Clamorgan.
4. Translation of deed from Jean Eli Thologan to Louis Lebeaume.

It it also agreed that the two affidavits of Henry Clamorgan & the affidavit of James L. Bradford, same taken by consent, the United States waiving the right of cross-examining and waiving technical objections, but reserving all as to substance & effect.

BEN. EMMONS,
Ass't U. S. Att'y.
A. D. ANDERSON.
J. L. BRADFORD.
HIRAM J. GROVER.

454 (Indorsed:) 2225. Henry Clamorgan et al. vs. The United States, & Henry T. Blow et al. vs. The United States. Stipulation. Filed 22 June, 1876. Joseph H. Clark, clerk.

455 In the U. S. dist. court for east. dist. of Mo.

HENRY CLAMORGAN ET AL. vs. THE UNITED STATES. & HENRY T. BLOW ET AL. vs. THE UNITED STATES. } Consolidated.

It is agreed in the above-entitled causes that the deed from the heirs of Louis Lebeaume to the Clamorgans & proof of heirship or legal representation may be filed at any time prior to the taking out of the transcript of appeal.

J. L. BRADFORD.
A. D. ANDERSON.
BEN. EMMONS,
Asst. U. S. Atty.

456 (Indorsed:) 2225. Hey. Clamorgan et al. vs. The United States. Stipulation as to deed, &c., from heirs of Le Beaume to the Clamorgans. Filed 22 June, 1876. Joseph H. Clark, clerk.

457 U. S. district court, eastern district of Mo.

HENRY CLAMORGAN ET ALS. vs. THE UNITED STATES. } No. 2225.

It is agreed that formal order for the publication of testimony in the above-entitled cause be waived by the undersigned counsel, & that publication be considered as passed.

J. L. BRADFORD.
A. D. ANDERSON.
H. J. GROVER.
DAVID P. DYER,
U. S. Atty.

458 (Indorsed:) 2225. H'y Clamorgan et al. vs. The United States. Consent to waive order for publication of testimony. Filed 19 June, 1876. Joseph H. Clark, clerk.

459 HENRY CLAMORGAN ET AL. vs. UNITED STATES.

HENRY T. BLOW ET AL. vs. UNITED STATES.

Whereas Wm. H. Couzens and Julius Pitzman have heretofore been examined as witnesses herein in behalf of the defendant, and cross examined by counsel for complainants, and it is now desired by the defendant to go into an examination of another witness on behalf of defendant, to wit, Charles E. Salomon: Now it is stipulated and admitted

that said witness, Charles E. Salomon, would, upon such examination and cross-examination, swear to the same facts as have been sworn to by said Couzens and Pitzman in *there* examination and cross-examination.

J. L. BRADFORD.
HIRAM J. GROVER.
BEN EMMONS,
Asst. U. S. Atty.

460 (Indorsed:) 2225. Henry Clamorgan et al. vs. The United States, &c. Stipulation as to testimony of Charles E. Salomon. Filed 21st June, A. D. 1876. Joseph H. Clark, clerk.

461 (Here insert plans H, I, J, & K; also L^1, L^2, & L^3.)
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468 In the United States district court for the eastern district of Missouri.

HENRY CLAMORGAN ET AL. *vs.* THE UNITED STATES. & HENRY T. BLOW ET AL. *vs.* THE UNITED STATES. } 2225, 2673.

It is hereby stipulated and agreed by & between the parties to this suit, that the maps or Exhibits L^1, L^2, & L^3 are filed simply for the purpose of illustrating the manner in which survey of tracts of land similar to those described in said exhibits might be made.

St. Louis, Nov. 6, 1876.

WM. H. BLISS,
U. S. Atty., E. D. Mo.
GROVER & ELLIS,
Solicitors for Henry T. Blow, jr., et al.
A. D. ANDERSON &
J. L. BRADFORD,
Att'ys for Clamorgans.

(Indorsed:) 2225 & 2673. Henry Clamorgan et al. vs. The United States, & Henry T. Blow et al. vs. The United States. Stipulation in regard to Exhibits L^1, L^2, & L^3. Filed nunc pro tunc on 10 Nov'r, 1876, as of June 22, 1876. Joseph H. Clark, clerk.

469 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, Joseph H. Clark, clerk of the district court of the United States in and for the eastern district of Missouri, do hereby certify the writings hereto annexed to be true copies of the records and proceedings, together with the testimony, translations, and exhibits therein referred to in cases

No. 2225, A. D. 1873, of Henry Clamorgan et al., petitioners, against the United States, defendant; and in case No. 2673, of Henry T. Blow, jr., et al., petitioners, against the United States, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this eleventh day of November, in the year of our Lord eighteen hundred and seventy-six.

[SEAL.] JOSEPH H. CLARK,
Clerk of said Court.

(Indorsed:) No. 2225, A. D. 1873, & No. 2673, A. D. 1875. United States district court, eastern district of Missouri. Henry Clamorgan et al. and Henry T. Blow et al. against the United States, &c. Duly certified copy of the record and proceedings, and testimony and exhibits in the above-entitled causes.

(Indorsement on cover:) No. 307, The United States, appellants, vs Henry Clamorgan et al., and No. 308, Henry Clamorgan et al., appellants, vs. The United States. Filed 17th November, 1876. No. 320, Cyprian Clamorgan, appellant, vs. The United States. E. Missouri D. C. U. S. Filed 16th December, 1876.